

EXHIBIT 69

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION

Civil Action No. 1:19-cv-00150-DMT-ARS

VIDEOTAPE DEPOSITION OF:
MAJOR GENERAL DONALD E. JACKSON, JR. (RET.)
July 29, 2022
(via RemoteDepo)

STATE OF NORTH DAKOTA,

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendant.

PURSUANT TO NOTICE, the videotape deposition of MAJOR GENERAL DONALD E. JACKSON, JR. (RET.) was taken on behalf of the Plaintiff in Duval County, Florida, by remote means, on July 29, 2022, at 8:29 a.m. MDT, before Gail Obermeyer, Registered Professional Reporter and Notary Public within Colorado, appearing remotely from Douglas County, Colorado.

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Page 2			Page 4		
1	REMOTE APPEARANCES		1	I N D E X (Continued)	
2	For the Plaintiff:		2		INITIAL
3	PAUL M. SEBY, ESQ.		3	DEPOSITION EXHIBITS: (Previously marked)	REFERENCE
	PAUL B. KERLIN, ESQ.		4	Exhibit 494 Email to SRJ2@ios.doi.gov from	71
4	Greenberg Traurig, LLP			U.S. Department of the Interior,	
	1144 15th Street, Suite 3300			9/9/16, Subject: Joint	
5	Denver, Colorado 80202			Statement from the Department of	
	Email: sebyp@gtlaw.com			Justice, the Department of the	
6	kerlinp@gtlaw.com			Army and the Department of the	
7				Interior regarding Standing Rock	
	For the Defendant:			Sioux Tribe V. U.S. Army Corps	
8				of Engineers, Bates Nos.	
	ERICA ZILIOLI, ESQ.		8	DOI_00000001 - DOI_00000002	
9	V. WILLIAM SCARPATO III, ESQ.		9	Exhibit 684 (Confidential document)	56
	United States Attorney's Office/			Bates Nos. USACE_00044967 -	
10	District of Colorado		10	USACE_00044968	
	1801 California Street, Suite 1600		11	Exhibit 686 (Confidential document)	59
11	Denver, Colorado 80202			Bates Nos. USACE_00002482 -	
	Email: erica.m.zilioli@usace.army.mil		12	USACE_00002484	
12	victor.scarpato@usdoj.gov		13	Exhibit 688 (Confidential document)	63
13				Bates No. USACE_00049705	
	Also Present (Remotely):		14		
14	Dustin Lamb, Remote Video Technician		15	Exhibit 690 Email to Tedeschi from Turner,	68
	Rachel Hymel			9/8/16, Subject: FW:	
15			16	LTG SEMONITE TASKER - LAYDOWN OF	
16				PROTEST SITE - 8 SEP 2016 MRD	
17			17	Morning Report (UNCLASSIFIED)	
18				Bates Nos. USACE_00027169 -	
19				USACE_00027207	
20			18		
21			19		
22			20		
23			21		
24			22		
25			23		
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			25		
Page 3			Page 5		
1	I N D E X	PAGE	1	WHEREUPON, the following proceedings	
2	EXAMINATION OF MAJOR GENERAL DONALD E.	PAGE	2	were taken pursuant to the Federal Rules of Civil	
	JACKSON, JR. (RET.)	PAGE	3	Procedure.	
3	July 29, 2022		4	* * * * *	
4	By Mr. Seby	7	5	THE VIDEOGRAPHER: We are now on the	
5	By Ms. Zilioli	--	6	record. Participants should be aware that this	
6			7	proceeding is being recorded, and as such, all	
7	DEPOSITION EXHIBITS:	INITIAL	8	conversations held will be recorded, unless there is a	
8	(Exhibits provided electronically to the	REFERENCE	9	request and agreement to go off the record. Private	
	reporter.)		10	conversations and/or attorney-client interactions	
9			11	should be held outside the presence of the remote	
10	Exhibit 701 (Confidential document)	82	12	interface.	
	Bates Nos. USACE_00125734 -		13	For the purpose of creating a witness-only	
	USACE_00125737		14	video recording, the witness is being spotlighted or	
11	Exhibit 705 (Confidential document)	104	15	locked on all video screens while in speaker view. We	
12	Bates Nos. USACE_00045315 -		16	ask that the witness not remove the spotlight setting	
	USACE_00045317		17	during the deposition, as it may cause other	
13	Exhibit 709 (Confidential document)	142	18	participants to appear on the final video, rather than	
14	Bates Nos. USACE_00045171 -		19	just the witness. For anyone who does not want the	
	USACE_00045172		20	witness's video to take up the large part of your	
15	Exhibit 711 (Confidential document)	151	21	screen, you may click the gallery view button in the	
16	Bates Nos. USACE_00005454 -		22	upper right-hand corner of the RemoteDepo interface.	
	USACE_00005455		23	This is the remote video-recorded	
17	Exhibit 712 (Confidential document)	166	24	deposition of General Donald E. Jackson, being taken by	
18	Bates Nos. USACE_00016545 -		25	counsel for the plaintiff. Today is Friday, July 29,	
19	USACE_00016546				
20	DEPOSITION EXHIBITS: (Previously marked)				
21	Exhibit 318 (Confidential document)	122			
	Bates Nos. USACE_00024035 -				
22	USACE_00024037				
23	Exhibit 420 (Confidential document)	80			
	Bates Nos. ARMY_0011059 -				
24	ARMY_00110567				
25					

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<p style="text-align: right;">Page 6</p> <p>1 2022. The time is now 2:29 p.m. UTC, 8:29 a.m. 2 Mountain. We are here in the matter of State of North 3 Dakota versus the United States of America.</p> <p>4 My name is Dustin Lamb, remote video 5 technician on behalf of U.S. Legal Support. I am not 6 related to any party in this action, nor am I 7 financially interested in the outcome. At this time 8 will the reporter, Gail Obermeyer, on behalf of 9 U.S. Legal Support, please enter the statement for 10 remote proceedings into the record.</p> <p>11 THE REPORTER: The attorneys participating 12 in this deposition acknowledge that I am not physically 13 present in the deposition room and that I will be 14 reporting this deposition remotely. They further 15 acknowledge that, in lieu of an oath administered in 16 person, the witness will verbally declare his testimony 17 in this matter is under penalty of perjury. The 18 parties and their counsel consent to this arrangement 19 and waive any objections to this manner of reporting. 20 Please indicate your agreement by stating your name and 21 your agreement on the record.</p> <p>22 MR. SEBY: Good morning. This is Paul 23 Seby, counsel for the plaintiff, State of North Dakota, 24 I agree.</p> <p>25 MS. ZILIOLI: This is Erica Zilioli,</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. Would you please state your full name for 2 the record.</p> <p>3 A. Yes, sir. My name is Donald Edwin 4 Jackson, Jr.</p> <p>5 Q. And before we go over -- before we begin, 6 sir, let's go over a couple of ground rules for the 7 deposition, most of which are intended to help the 8 court reporter take down everything we say. Okay?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Everything we say today is being both 11 written down and videotaped. And because of that, 12 please verbalize your responses with a yes or no or 13 other answer, as opposed to just a nod of the head, for 14 example, yes or no.</p> <p>15 A. Yes, sir.</p> <p>16 Q. Likewise, it's -- it's difficult for the 17 court reporter to take down what we're saying if we 18 inadvertently talk over each other. So I will do my 19 best not to interrupt you, and if you would do the same 20 and let me finish my question, that would be great.</p> <p>21 Does that work?</p> <p>22 A. Yes, sir.</p> <p>23 Q. And, General Jackson, if you feel as 24 though you need a break at any time during the 25 deposition, just please let me know, and we will do</p>
<p style="text-align: right;">Page 7</p> <p>1 counsel for defendant, United States, I agree.</p> <p>2 THE REPORTER: And, General --</p> <p>3 THE DEPONENT: This is General Donald E. 4 Jackson, I agree.</p> <p>5 THE REPORTER: And, General Jackson, do 6 you declare your testimony in this matter is under 7 penalty of perjury?</p> <p>8 THE DEPONENT: I do.</p> <p>9 THE REPORTER: Thank you.</p> <p>10 MAJOR GENERAL DONALD E. JACKSON, JR. (RET.), 11 having verbally declared his testimony in this matter 12 is under penalty of perjury, testified as follows:</p> <p>13 EXAMINATION</p> <p>14 BY MR. SEBY:</p> <p>15 Q. All right. Good morning, General Jackson. 16 My name is Paul Seby. I'm both an attorney with the 17 law firm of Greenberg Traurig and a special assistant 18 attorney general for the State of North Dakota. And 19 along with my co-counsel, Paul Kerlin, who is with us 20 for the deposition today, we represent the State of 21 North Dakota. And today, we'll refer to our client 22 collectively as "North Dakota" or the "State." Do you 23 understand, sir, that you've just been sworn in this 24 morning?</p> <p>25 A. Yes, sir, I do.</p>	<p style="text-align: right;">Page 9</p> <p>1 that. And the only caveat, sir, is if there's a 2 question pending, let's -- let's please have you first 3 answer the question, and then we can take the -- the 4 necessary break. Otherwise, I'll -- I'll try and 5 suggest we have a short break every hour or so. If 6 you --</p> <p>7 A. Okay.</p> <p>8 Q. -- do not understand a question that I've 9 asked, just please let me know. Ask me to repeat it or 10 rephrase it, and I will do my best to clarify the 11 question pending and make sure that you hopefully 12 understand what it -- what it is I'm trying to ask you.</p> <p>13 Does that sound okay?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Is anyone in the room with you this 16 morning, sir?</p> <p>17 A. Just Erica Zilioli, my counsel.</p> <p>18 Q. Okay. Are you relying upon any documents 19 during the deposition today that you've got in front of 20 you or you have with you that you plan to put in front 21 of you?</p> <p>22 A. No, sir.</p> <p>23 Q. Okay. General Jackson, do you understand 24 that you're obligated to tell the truth today under 25 oath?</p>

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<p style="text-align: right;">Page 10</p> <p>1 A. Yes, sir, I do.</p> <p>2 Q. And do you understand, sir, that your 3 deposition today has the same force and effect as if 4 you were in front of a judge or a jury?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And do you understand that portions of 7 your videotape deposition today may be played in the 8 future to the court if this case were go -- were to go 9 to trial?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Okay. Do you have any questions about 12 these -- these instructions?</p> <p>13 A. No, sir.</p> <p>14 Q. All right. Thanks. General Jackson, what 15 did you do to prepare for your deposition today?</p> <p>16 A. Sir, I had two sessions with Erica. One 17 was held on the 15th of July, and one was held 18 yesterday, to help me understand the nature of the 19 proceedings and the process that we would use to go 20 through this deposition.</p> <p>21 Q. Okay. Did you meet with anyone else, 22 along with Ms. Zilioli?</p> <p>23 A. There was a -- an attorney present from 24 the Department of Justice.</p> <p>25 Q. Who was that individual?</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. Okay. Do you have any notes that you 2 referred to that you don't have with you at your 3 deposition today -- given your earlier response -- that 4 you used to refresh your memory or review?</p> <p>5 A. No, sir.</p> <p>6 Q. Okay. And, General Jackson, are you aware 7 that, to date, North Dakota has taken the sworn 8 deposition testimony of Major Startzell; U.S. Marshal 9 Retired Paul Ward; Eileen Williamson and Eric Stasch; 10 Colonel John Henderson; General Spellmon; Lowry Crook; 11 Secretary Sally Jewell; former Assistant Secretary to 12 the Army, Jo-Ellen Darcy; and then, most recently, 13 General Semonite?</p> <p>14 A. I'm only aware that John Henderson and 15 General Semonite were interviewed, but I'm not aware of 16 anyone else.</p> <p>17 Q. Okay. Did you review any of their 18 deposition transcripts or statements?</p> <p>19 A. No, sir.</p> <p>20 Q. All right. Are you aware, sir, of the 21 case State of North Dakota versus the United States 22 that is the reason for the deposition today?</p> <p>23 A. I'm aware of the case, but I don't -- I'm 24 not aware of the details.</p> <p>25 Q. Okay. I'll -- I'll just tell you, then,</p>
<p style="text-align: right;">Page 11</p> <p>1 A. Tim and -- was with me on the 15th. I 2 can't recall his last name. And Bill, who is on the 3 call today, was here yesterday -- or over video. It 4 was a video prep.</p> <p>5 Q. With both of those gentlemen?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Okay. How long did you -- how long were 8 your sessions with your counsel?</p> <p>9 A. Sir, on the 15th, two hours; and 10 yesterday, about three hours.</p> <p>11 Q. Okay. Apart from interacting with your 12 counsel, what did you do to prepare for your deposition 13 today?</p> <p>14 A. I didn't do anything, sir.</p> <p>15 Q. Okay. Did you talk to anyone else, other 16 than your counsel, in preparation for your deposition 17 today?</p> <p>18 A. No, sir.</p> <p>19 Q. Okay. Let's see. Are you -- did you 20 review any documents, prior to your deposition today?</p> <p>21 A. I just reviewed a few documents yesterday 22 as part of my prep with the attorneys.</p> <p>23 Q. Did you research, on your own, any issues 24 in this case?</p> <p>25 A. No, sir.</p>	<p style="text-align: right;">Page 13</p> <p>1 this deposition pertains to the State of North Dakota's 2 action against the United States under the Federal Tort 3 Claims Act involving a \$38 million -- \$38 million in 4 damages the State seeks to recover from the United 5 States as a result of the Corps' and other federal 6 agencies' and officials' actions associated with the 7 protests against the Dakota Access Pipeline. Do you 8 understand that?</p> <p>9 A. Yes, sir. Thank you for explaining --</p> <p>10 Q. Did you understand that -- I'm sorry?</p> <p>11 A. I said, thank you for explaining that.</p> <p>12 Q. Yup. And are you saying that you did not 13 understand that, prior to my asking that question?</p> <p>14 A. Not the details, no, sir.</p> <p>15 Q. Okay. Are you aware of any of the court's 16 substantive rulings in the case to date?</p> <p>17 A. I -- I remember some of the court's 18 rulings as we were going through the permitting 19 process, but I don't recall specific dates or what the 20 specific judgments were.</p> <p>21 Q. Sure. And just to clarify, I think you're 22 referencing judicial proceedings other than this one.</p> <p>23 I'm asking about --</p> <p>24 A. Yes, sir.</p> <p>25 Q. -- are you aware of any of the court's</p>

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<p style="text-align: right;">Page 14</p> <p>1 rulings, the U.S. District Court for the District of 2 North Dakota, which this case is being heard in front 3 of? Are you aware of any of that court's substantive 4 rulings in the case to date?</p> <p>5 A. No, sir, I'm not. Thanks for clarifying 6 that.</p> <p>7 Q. Sure. General Jackson, what is your 8 current residence location?</p> <p>9 A. Sir, I live in Fernandina Beach, Florida.</p> <p>10 Q. Could you spell that first name of the 11 city?</p> <p>12 A. Yes, sir. It's F-e-r-n-a-n-d-i-n-a, and 13 then second word is Beach.</p> <p>14 Q. Florida?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Okay. General Jackson, would you describe 17 your -- where you are from.</p> <p>18 A. Sir, where I'm originally from?</p> <p>19 Q. Yes.</p> <p>20 A. I was born in Anderson, South Carolina.</p> <p>21 Q. Okay. And would you walk through your 22 education, your formal education after high school, if 23 you would.</p> <p>24 A. Yes, sir. I attended Clemson University 25 and graduated in 1986 and then joined the Army as a</p>	<p style="text-align: right;">Page 16</p> <p>1 put it that way.</p> <p>2 A. Yes, sir. Okay. Sir, I -- I was 3 commissioned as a second lieutenant in the Engineer 4 Regiment out of Clemson. I reported to Fort Belvoir, 5 Virginia in 1986 and received my initial engineer 6 officer training. Following graduation from that, I 7 reported to Fort Drum, New York to the 10th Mountain 8 Division in February of 1987, where I was a platoon 9 leader and a company executive officer.</p> <p>10 I returned to Fort Leonard Wood, Missouri 11 in 1990 and went to the engineer officers advanced 12 course and graduated at the end of December and was 13 promoted to captain. I was assigned in January of 1991 14 to the 554th Engineer Battalion, where I served as an 15 engineer instructor and small group leader.</p> <p>16 In March of 1992, I was assigned as a 17 company commander with the 5th Engineer Battalion at 18 Fort Leonard Wood. I was the Bravo Company, the 19 B Company commander. In November of 1994, I was 20 reassigned to Washington, D.C., where I served as a 21 personnel assignment officer in the Total Army 22 Personnel Command in Alexandria, Virginia. I remained 23 at that location until 1996, and I was reassigned to 24 the Army Command and General Staff College at Fort 25 Leavenworth, Kansas. During that time, I was promoted</p>
<p style="text-align: right;">Page 15</p> <p>1 second lieutenant.</p> <p>2 Q. And what -- what was the process of 3 joining the -- the Army after you graduated from 4 college?</p> <p>5 A. Sir, I was on an Army ROTC scholarship, so 6 I was commissioned as a second lieutenant out of ROTC 7 following graduation.</p> <p>8 Q. Okay. And continue, please, with your 9 education, if -- if there's any remaining.</p> <p>10 A. The only other education that I had, 11 outside of normal Army schooling, was I received a 12 master's degree in business administration from Webster 13 University that I received in 1994. And I received a 14 master's in strategic studies from the U.S. Army War 15 College in 1997.</p> <p>16 Q. Okay. And after you graduated from 17 Clemson and became an Army second lieutenant, would you 18 describe your further career development within the 19 United States military.</p> <p>20 A. Yes, sir. Do you want me to go position 21 by position, or how much detail would you like for me 22 to provide?</p> <p>23 Q. Yes, if you would. Just step me through 24 the -- the progression of your ascension in rank, if 25 you would, to where -- how you got to be general, let's</p>	<p style="text-align: right;">Page 17</p> <p>1 to major.</p> <p>2 When I graduated in 1997, I was assigned 3 to the 4th Engineer Battalion in Fort Carson, Colorado. 4 And I served for one year as the battalion operations 5 officer and one year as the battalion executive 6 officer.</p> <p>7 In the summer of 1999, I was reassigned to 8 South Korea to the Combined Forces Command, where I 9 served as the fortifications officer on the Combined 10 Staff in South Korea from 1999 until 2001.</p> <p>11 In July of 2001 -- or June of 2001, I was 12 promoted to lieutenant colonel and was reassigned to 13 the the U.S. Army Headquarters in Europe, in 14 Heidelberg, Germany, where I served as the engineer of 15 plans and strategy officer for one year.</p> <p>16 And then I was reassigned in July of 2002 17 to the 54th Engineer Battalion in Bamberg, Germany, 18 where I served as the battalion commander. During that 19 tour, I deployed to Iraq --</p> <p>20 (At this time the deponent's remote video 21 connection froze.)</p> <p>22 THE REPORTER: I believe he froze.</p> <p>23 THE DEPONENT: Okay. Can you still hear 24 me?</p> <p>25 THE REPORTER: For me -- for me, you froze</p>

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<p style="text-align: right;">Page 18</p> <p>1 right after, "During that tour, I deployed to 2 Iraq . . ."</p> <p>3 THE DEONENT: Okay. Can you hear me now, 4 though?</p> <p>5 THE REPORTER: Yes.</p> <p>6 THE DEONENT: Okay. So I'll start back 7 at that point, Gail.</p> <p>8 A. So in -- during that tour in Bamberg, I 9 deployed to Iraq from February of 2003 until December 10 2003. Then I returned back to Germany, and in the 11 summer of 2004 I was reassigned to the Pentagon, where 12 I served as a programs officer for the Office of the 13 Chief of Engineers.</p> <p>14 In the summer of 2006, I was assigned to 15 the Army -- U.S. Army War College in Carlisle, 16 Pennsylvania. And following graduation in 2007, I was 17 assigned as the commander of the Little Rock District, 18 U.S. Army Corps of Engineers in Little Rock, Arkansas. 19 I served there for three years.</p> <p>20 Following that tour, I was reassigned to 21 South Korea, where I was assigned as the Chief of Staff 22 for the 8th U.S. Army in Seoul, Korea. I served in 23 that role for two years, and then I was reassigned to 24 Atlanta, Georgia to command the South Atlantic Division 25 of the U.S. Army Corps of Engineers and was</p>	<p style="text-align: right;">Page 20</p> <p>1 A. Sir, I work as the Director of Federal 2 Solutions and Technology for Jacobs Engineering.</p> <p>3 Q. And what does your role in that capacity 4 involve?</p> <p>5 A. I am a program manager, responsible for 6 several portfolios. One of those includes Army Civil 7 Works, one includes energy, one includes data and 8 cyber, one includes health, and the other one includes 9 climate response and ESG.</p> <p>10 Q. Okay. Thank you. And that -- Jacobs 11 Engineering is a -- does work for the United States 12 Government, and you help serve in that role for those 13 services?</p> <p>14 A. Yes, sir. The U.S. Government, in the 15 business unit that I support, which is in the federal 16 business, the -- the federal government is our 17 client --</p> <p>18 Q. Yeah.</p> <p>19 A. -- or many -- many, many agencies from the 20 federal government are our clients.</p> <p>21 Q. Sure. Which agencies would those be?</p> <p>22 A. Well, the Department of Defense, the 23 Environmental Protection Agency, Department of the 24 Interior, FEMA. Those are the ones that come to mind 25 off the top of my head.</p>
<p style="text-align: right;">Page 19</p> <p>1 subsequently promoted to brigadier general. I served 2 there for two years.</p> <p>3 And in April of 2014, I was assigned to 4 Afghanistan, the U.S. Forces Afghanistan, as the Deputy 5 Chief of Staff for engineering for the Theater of 6 Afghanistan. And I was there for almost one year, 7 returning back to the U.S. in December of 2014.</p> <p>8 And in January of 2015, I was assigned to 9 the Headquarters U.S. Army Corps of Engineers as the 10 deputy commanding general for military and 11 international operations. During that time I was 12 promoted to major general. And in August of 2015, I 13 was reassigned as the deputy commanding general for 14 civil and emergency operations. I held that position 15 until April of 2018, where I was reassigned to the Army 16 staff in the Pentagon as the deputy inspector general 17 for the U.S. Army. And I held that position until my 18 retirement in December of 2020.</p> <p>19 Q. (BY MR. SEBY) Thank you. Have you 20 ever -- apart from that very distinguished career in 21 the military, have you ever worked in the private 22 sector?</p> <p>23 A. Sir, I currently work in the private 24 sector.</p> <p>25 Q. And what do you do?</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. Sure. Okay. Thank you. Would you -- 2 General Jackson, would you describe your position as a 3 federal official with the United States Army Corps 4 during the period of the protests against the Dakota 5 Access Pipeline -- and I'll give you some dates -- 6 approximately March of 2016 to March of 2017.</p> <p>7 A. Yes, sir. During that time, I was the 8 deputy commanding general for civil and emergency 9 operations for the U.S. Army Corps of Engineers.</p> <p>10 Q. And would you describe that role, please, 11 in that context.</p> <p>12 A. I was responsible for the execution of the 13 Army's Civil Works program; which generally covers 14 navigation, flood risk management, aquatic ecosystem 15 restoration, environmental stewardship, recreation, 16 hydropower, and environmental permitting.</p> <p>17 Q. Okay. And would you describe the scope of 18 your authority in that position? What decision could 19 you make with regard to the Government's involvement in 20 the DAPL protests or the protests against DAPL?</p> <p>21 MS. ZILIOLI: Objection to the extent it 22 calls for a legal conclusion.</p> <p>23 A. Sir, if you could be more specific on what 24 authority. I had several authorities, but most of the 25 decisions were made by commanders at the district,</p>

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<p style="text-align: right;">Page 22</p> <p>1 division, and Corps of Engineers Headquarters level. I 2 served primarily as a staff officer with -- so my -- my 3 decision-making authority on many of those things was 4 more advisory, as opposed to decisive --</p> <p>5 Q. (BY MR. SEBY) Thank you.</p> <p>6 A. -- if that makes sense.</p> <p>7 Q. It does. No, that's appreciated. So I 8 want to ask you about your chain of command, both up 9 and down, and then any lateral, if there is any. So as 10 the deputy commanding general responsible for the 11 Army's Civil Works program, who did you report to?</p> <p>12 A. Sir, I reported to the chief of engineers, 13 Army chief of engineers.</p> <p>14 Q. And at the time of your position during 15 the DAPL protests, who was that individual?</p> <p>16 A. Sir, that individual was Lieutenant 17 General Todd Semonite.</p> <p>18 Q. Uh-huh. Did you report to anyone else?</p> <p>19 A. No, sir.</p> <p>20 Q. Okay. And then, General Jackson, who 21 reported to you?</p> <p>22 A. I had two officers that reported directly 23 to me, my executive officer and our direct executive 24 officer. One was a major, one was a colonel.</p> <p>25 Q. So would you identify those individuals,</p>	<p style="text-align: right;">Page 24</p> <p>1 week; and informally, many times, just depending on the 2 circumstances and what information she needed at the 3 time.</p> <p>4 Q. Sure. Okay. And did you have any 5 oversight authority over any of the Corps division 6 directors or district directors, commanders?</p> <p>7 A. No, sir, I had no oversight, but I was -- 8 as the commanding general, meaning General Semonite, as 9 his deputy commanding general for Civil Works and 10 Emergency Management, he held me responsible to manage 11 those programs. So I worked very closely, very 12 frequently, with all the district and all the division 13 commanders who had Civil Works mission 14 responsibilities.</p> <p>15 Q. Collaboratively or as a superior officer?</p> <p>16 A. Usually, collaboratively; but I was a 17 superior officer, so there was deference involved.</p> <p>18 Q. Yeah, sure. Okay. All right. Were you 19 involved in any of the Corps' regulatory rulemaking 20 development programs?</p> <p>21 A. No, sir, I wasn't involved in any of the 22 rulemaking.</p> <p>23 Q. Did you have anything to do with the 2015 24 final Waters of the United States rule that the Corps 25 of Engineers developed, along with the United States</p>
<p style="text-align: right;">Page 23</p> <p>1 please, by name.</p> <p>2 A. Ian O'Sullivan was the major. Jeff 3 Anderson was the colonel.</p> <p>4 Q. Jeff Anderson was the executive officer?</p> <p>5 A. That was his title; yes, sir.</p> <p>6 Q. Okay. And the other person, I'm sorry?</p> <p>7 A. Ian O'Sullivan.</p> <p>8 Q. Okay.</p> <p>9 A. He was my personal executive officer.</p> <p>10 Q. I see. What was your interaction with 11 Ms. Jo-Ellen Darcy, the Assistant Secretary for Civil 12 Works?</p> <p>13 A. I advised her on the execution of the 14 Army's Civil Works program.</p> <p>15 Q. But you did not report to her; is that 16 correct?</p> <p>17 A. Technically, no, I did not.</p> <p>18 Q. Okay.</p> <p>19 A. Yes, sir.</p> <p>20 Q. All right. Did you communicate frequently 21 with her?</p> <p>22 A. Sir, I communicated with Ms. Darcy as 23 often as I could, which was the -- the best way to keep 24 her advised of what was going on in the Army's Civil 25 Works program. Formally, I would meet with her once a</p>	<p style="text-align: right;">Page 25</p> <p>1 Environmental Protection Agency?</p> <p>2 A. No, sir. I wasn't -- I don't believe I 3 was assigned to -- in that role when that ruling was 4 made.</p> <p>5 Q. Okay. What major issues involving the 6 Dakota Access Pipeline were you involved in?</p> <p>7 A. I was involved in the Dakota Access 8 Pipeline from the moment it became an issue of national 9 significance with regard to its regulatory mission and 10 the regulatory actions that were ongoing to permit the 11 pipeline.</p> <p>12 Q. And when was that, sir?</p> <p>13 A. I first became aware that there were 14 concerns in -- with the permitting of that probably in 15 July of 2016.</p> <p>16 Q. By that time, had Colonel Henderson or -- 17 or General Semonite made any determinations or 18 approvals concerning the Dakota Access Pipeline?</p> <p>19 A. I don't believe so, but I don't recall, 20 exactly.</p> <p>21 Q. So did you have a hand in any of the 22 permit approvals or authorizations that the Corps made 23 regarding the Dakota Access Pipeline?</p> <p>24 A. No, sir.</p> <p>25 Q. So when -- when those actions were made,</p>

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<p style="text-align: right;">Page 26</p> <p>1 to the extent they were made by Colonel Henderson or 2 General Spellmon, you were made aware of them, but not 3 involved in the development or decisions regarding 4 them. Is that what you're saying?</p> <p>5 A. Sir, what I'm saying is I did not -- I was 6 not the decision-making authority on those actions. 7 I -- I'm sure once the concerns were raised to my level 8 of the -- the concerns with the Standing Rock Sioux 9 Tribe, then I was involved in discussions with them, 10 but I was not part of the approval process.</p> <p>11 Q. Was it part of your job, General Jackson, 12 to liaison with any other federal officials --</p> <p>13 A. Yes, sir.</p> <p>14 Q. -- outside of the United States Army?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And who would that be?</p> <p>17 A. Can you be more specific?</p> <p>18 Q. I'm asking you to identify the individuals 19 outside of the United States Army that you liaised 20 with, given that you've told me that was part of your 21 job.</p> <p>22 A. Sir, I -- I routinely liaised -- and I 23 don't remember specific names, so I apologize. But I 24 routinely liaised with counterparts in the Department 25 of the Interior, because the Bureau of Reclamation and</p>	<p style="text-align: right;">Page 28</p> <p>1 Council, and it included other members of the federal 2 government. I don't recall all of the agencies that 3 were there. I certainly don't remember their names. 4 But I knew that I was the representative from the Army 5 Corps for that.</p> <p>6 Q. And that -- those meetings of the National 7 Security Council pertained to the Dakota Access 8 Pipeline?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And when did those meetings start?</p> <p>11 A. Sir, I don't recall, exactly. I do 12 believe they were held in late September and October 13 and maybe even into -- to November; but I don't recall, 14 exactly, the dates.</p> <p>15 Q. And what did the meetings involve? Why 16 were they convened relative to the Dakota Access 17 Pipeline?</p> <p>18 A. So they were convened, I believe, because 19 there were multiple agencies that had some equity in 20 what was going on on the ground in North Dakota. And 21 my understanding was that those meetings were designed 22 to ensure that everyone was -- had information and 23 understood what each of the other agencies were doing 24 or what their concerns were.</p> <p>25 That -- that meeting was often attended by</p>
<p style="text-align: right;">Page 27</p> <p>1 the Corps of Engineers shared very similar missions. I 2 liaised with the Environmental Protection Agency for 3 the same reason. And I liaised with FEMA as part of my 4 duties in the -- under the national response framework 5 for Emergency Management. Those are the ones that I 6 recall liaising with the most.</p> <p>7 Q. And is that as a general matter or 8 specific to the Dakota Access Pipeline issues and 9 circumstances?</p> <p>10 A. Oh, sir, those were general matters.</p> <p>11 Q. Okay. How about with respect to the 12 Dakota Access Pipeline?</p> <p>13 A. With respect to the Dakota Access 14 Pipeline, I don't recall liaising with anybody outside 15 of the -- outside of my chain of command in the Army.</p> <p>16 Q. Directly or indirectly, does that answer 17 pertain to?</p> <p>18 A. I'm not sure I understand your question, 19 sir.</p> <p>20 Q. I just want to make sure I understand what 21 you're telling me. Are you telling me that outside of 22 the Army, you did not liaison directly with anyone in 23 other federal agencies, period?</p> <p>24 A. I attended a meeting that was held every 25 so often that was convened by the National Security</p>	<p style="text-align: right;">Page 29</p> <p>1 General Dohrmann, who was the State Adjutant General at 2 the time. And -- and I recall, at least on one 3 occasion, the Governor of North Dakota attended or, in 4 several occasions, a representative from his office was 5 also there, all designed to share information and make 6 sure everybody had a common operational picture.</p> <p>7 Q. Are you -- are you telling me that the 8 Governor of North Dakota and Major General Dohrmann 9 attended a meeting of the National Security Council 10 with other federal agencies?</p> <p>11 A. Yes, sir. They did it virtually by 12 telephone, as did I. And I don't remember exactly how 13 many times the Governor was on. I know he was on once, 14 because I remember that specifically. But I know 15 General Dohrmann -- I believe he was on every time that 16 I was on.</p> <p>17 Q. And these meetings were -- the people that 18 convened these meetings in person were in Washington, 19 D.C.?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Okay. What other federal agencies were 22 present or represented at the meeting?</p> <p>23 A. Sir, the only ones that I can confirm, I 24 know that DOJ was -- was represented. I know that the 25 Department of the Interior was represented, and I</p>

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<p style="text-align: right;">Page 30</p> <p>1 don't -- and the Army, because I was participating. 2 But I don't recall, specifically, who else was -- was 3 in those meetings, because it was done virtually and 4 there was no roster published, that I could see, to 5 know who all was on the call.</p> <p>6 Q. I see. Everybody participated by 7 telephone?</p> <p>8 A. Sir, I won't say that everybody did. I 9 only know that I did.</p> <p>10 Q. Okay. And -- and just to confirm, these 11 are meetings convened by the National Security Council?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Okay. As opposed to meetings convened by 14 the Governor or others in the State of North Dakota, 15 correct?</p> <p>16 A. Sir, I don't know who actually directed 17 that they be convened. I just know that the ones who 18 led -- the one who led them was some element of the 19 National Security Council staff, and they did include 20 the leadership of North Dakota.</p> <p>21 Q. Okay. Had you ever participated in such a 22 meeting like that before -- type of meeting forum?</p> <p>23 A. Yes, sir, I have; because when FEMA 24 operates in an emergency situation, it's a very similar 25 situation where the -- FEMA convenes meetings that</p>	<p style="text-align: right;">Page 32</p> <p>1 A. Sir, it was a whole -- it was a federal 2 entity that was pulling together other federal agencies 3 that were involved in one way, shape, or form of what 4 was going on in North Dakota in order to make sure that 5 everybody was communicating effectively and that there 6 was a good common operational picture shared by 7 everyone in the federal government who participated and 8 the State of North Dakota.</p> <p>9 Q. (BY MR. SEBY) And I apologize if you've 10 told me this, but who led the meeting -- meetings?</p> <p>11 A. Sir, I don't remember the name of the 12 individual, but it was an individual that was assigned 13 to the National Security Council staff.</p> <p>14 Q. And was that person the -- the person that 15 led each of the virtual calls that you participated in?</p> <p>16 A. Sir, I don't recall, because it's been 17 some time, if it was the same person. But I believe it 18 was the same person or the same office that convened 19 those calls.</p> <p>20 Q. Okay. All right. And were they strictly 21 by telephone, or were you on any sort of video feed as 22 well?</p> <p>23 A. Sir, I recall always being connected via 24 telephone.</p> <p>25 Q. Okay. Did anyone participate with you</p>
<p style="text-align: right;">Page 31</p> <p>1 include all federal agencies that have some equity or 2 some role in the disaster response. And -- and they 3 convene that so that we can make it a whole of 4 government approach to whatever the problem is that 5 needs to be solved. This was no different.</p> <p>6 Q. Okay. So, in your mind, this was akin to 7 a national disaster and the mobilization and 8 implementation of whatever federal response was -- was 9 decided to be made available?</p> <p>10 A. No, sir. I wasn't --</p> <p>11 MS. ZILIOLI: Objection, mischaracterizes 12 testimony.</p> <p>13 A. No, sir. I wasn't -- I wasn't -- I wasn't 14 comparing it to a national disaster. I was comparing 15 it to the way in which a whole of government team was 16 pulled together by one entity to facilitate 17 collaboration and communication.</p> <p>18 Q. (BY MR. SEBY) And the -- and the entity 19 that pulled it all together that -- I'm trying to 20 understand your choice of words -- was the federal 21 entity that pulled it all together to have an all of 22 government response to the Dakota Access Pipeline 23 protests?</p> <p>24 MS. ZILIOLI: Objection, mischaracterizes 25 testimony.</p>	<p style="text-align: right;">Page 33</p> <p>1 from the Corps when you participated in those -- those 2 meetings telephonically?</p> <p>3 A. No, sir. I only recall being -- I recall 4 being the only one from the Corps that -- that sat in 5 on those meetings.</p> <p>6 Q. Okay. And you recall they were occurring 7 from September through November of 2016?</p> <p>8 A. Sir, I don't remember the exact dates, but 9 it was roughly during that time frame.</p> <p>10 Q. Okay. Were you asked to speak about 11 anything as a participant in those virtual calls?</p> <p>12 A. Yes, sir. From time to time, I was called 13 to discuss what was -- what the Corps of Engineers was 14 doing at that -- at that time.</p> <p>15 Q. During that September through November 16 2016 period?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And did others -- other federal agencies 19 speak up during those meetings in a similar fashion, as 20 to what they were doing?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And who would those be?</p> <p>23 A. Sir, the only one that I recall 24 specifically was the Bureau of Indian Affairs from the 25 Department of the Interior.</p>

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<p style="text-align: right;">Page 34</p> <p>1 Q. And what did they say?</p> <p>2 A. They were just providing updates from 3 their perspective and from what they were receiving 4 from their people on the ground. I don't recall 5 specifically what information they provided.</p> <p>6 Q. How long would these meetings typically 7 last?</p> <p>8 A. Sir, I don't recall exactly, but probably 9 anywhere from 30 to 45 minutes.</p> <p>10 Q. And did the Governor speak up during any 11 of these calls that you participated in?</p> <p>12 A. Sir, I only remember hearing the Governor 13 once, and he did speak.</p> <p>14 Q. And I'm sorry, General Jackson, what was 15 the frequency of these meetings? Were they regularly 16 held or ad hoc?</p> <p>17 A. Sir, I don't remember, exactly. I think 18 there were certain times when they were held more 19 frequently; which would be maybe once a week, maybe 20 more than once. I just don't recall, exactly. But 21 they were -- they were -- I considered them routine for 22 a short period of time.</p> <p>23 Q. Okay. And the other agencies that 24 participated were the Department of Justice, the 25 Department of the Interior, in addition to yourself,</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. Did you ever receive any materials during 2 your participation in the National Security Council 3 briefings?</p> <p>4 A. No, sir. These were all done by voice, or 5 at least my participation was voice only.</p> <p>6 Q. Okay. Did you receive any email 7 communications from the National Security Council 8 staff, setting up the meetings?</p> <p>9 A. Sir, I received meeting invites, I'm sure. 10 That was standard practice. But I don't recall 11 receiving anything else from anyone from the National 12 Security Council.</p> <p>13 Q. And those meeting invites came by email 14 from a person of the National Security Council's staff?</p> <p>15 A. Sir, I don't recall exactly how those 16 meeting invites came, whether they were called in by 17 phone or sent by email.</p> <p>18 Q. How would you know what number to dial to 19 get on the call?</p> <p>20 A. Either my executive officer or my 21 secretary, whoever was populating it on my calendar at 22 that time, would put it on my calendar so I knew which 23 number to dial.</p> <p>24 Q. And the person that was your secretary, is 25 that the Ian that you mentioned earlier?</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. correct?</p> <p>2 A. Sir, those are the only ones that I 3 remember. There may have been -- there may have been 4 others, but those are the only ones that I'm aware of 5 or that I remember hearing speak.</p> <p>6 Q. Did the Department of Homeland Security 7 participate?</p> <p>8 A. Sir, I don't know if they did or not.</p> <p>9 Q. And within the Department of the Interior, 10 there's several departments and bureaus, correct?</p> <p>11 A. Yes, sir, there are.</p> <p>12 Q. And you mentioned one of them is the 13 Bureau of Indian Affairs, correct?</p> <p>14 A. Yes, sir.</p> <p>15 Q. What other departments, divisions, or 16 bureaus of the Department of the Interior participated?</p> <p>17 A. Sir, the only -- the only one that I 18 recall is the Bureau of Indian Affairs.</p> <p>19 Q. Okay. How about within the Department of 20 Justice? There's, similarly, bureaus and divisions and 21 other subagencies. Which of those participated?</p> <p>22 A. Sir, because I don't remember -- I don't 23 know who it was that was from the Department of 24 Justice, I couldn't answer exactly what direct 25 (inaudible) they came from.</p>	<p style="text-align: right;">Page 37</p> <p>1 A. Ian O'Sullivan. He was my executive 2 officer. And he may have put it on my calendar or my 3 secretary, Sharon Methina, may have put it on my 4 calendar. I don't recall which.</p> <p>5 Q. Okay. Were you ever asked to provide any 6 materials as a contribution to the workings of this 7 group?</p> <p>8 A. No, sir, I don't recall being asked to 9 provide any materials.</p> <p>10 Q. Okay. And as a result of your 11 participation in the National Security Council calls 12 concerning the Dakota Access Pipeline protests, did you 13 share anything out of those discussions with others in 14 the Army or the Corps; either?</p> <p>15 A. The only ones that I would have shared 16 those discussions with would have been Secretary Darcy, 17 Secretary Crook, General Semonite, Colonel Henderson, 18 and now-Lieutenant General Spellmon.</p> <p>19 Q. Okay. Do you recall what from the 20 National Security Council convening meetings that you 21 did share with those individuals that you just named?</p> <p>22 A. Sir, I don't recall any specific details. 23 But those meetings were really designed to share 24 information. And since I regularly spoke with Colonel 25 Henderson and General Spellmon, it was just a great</p>

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<p style="text-align: right;">Page 38</p> <p>1 opportunity to synchronize and make sure that the 2 information at their level was the same information 3 that was being reported up to the more-senior levels. 4 It was a great opportunity just to make sure that 5 everybody was operating off the same facts and 6 understanding of what was going on and what -- what 7 other -- what other agencies were doing.</p> <p>8 Q. Do you recall, though, what -- what you 9 did to share that information up your vertical chain of 10 command or with others that you collaboratively worked 11 with within the Department of the Army and the Corps?</p> <p>12 A. Sir, I -- I regularly had communications 13 with Colonel Henderson and General Spellmon, usually 14 every other day or so, depending on what was going on. 15 And I had the same level of frequency conversations 16 with General Semonite and either Ms. Darcy or 17 Mr. Crook. I don't recall exactly, because there was 18 really no routine nature for that conversation. It was 19 scheduled as often as we -- as our calendars would 20 allow, just to make sure that everybody had the same 21 information.</p> <p>22 Q. Were there any other means for you to 23 interact with other federal agencies, other than the 24 NSC -- NSC meetings and channel the communication that 25 you mentioned? Anything else -- other types of similar</p>	<p style="text-align: right;">Page 40</p> <p>1 A. Sir, I obviously read the news and read 2 the internet to see what others were saying. But I 3 just was trying to understand what the perceptions were 4 out there of what was going on on the ground. But I 5 didn't use any of that as a basis of fact for 6 reporting.</p> <p>7 Q. Did the Corps or the Army independently 8 monitor the Dakota Access Pipeline protests?</p> <p>9 A. Sir, at some point, probably in the 10 October-November time frame, we -- we regularly 11 reported -- when it became a national news event, we 12 regularly reported to the Army Operations Center. 13 That's -- that's normal process for anything. But 14 we -- we don't normally report on permitting actions. 15 But given the national media coverage that this was 16 getting, it was obviously necessary for us to keep the 17 Army leadership aware of what we were doing. So we did 18 that through normal reporting channels from the Corps 19 of Engineers Operations Center.</p> <p>20 Q. I apologize for interrupting you, but 21 you're -- you're going in a different direction than 22 the question. The question is, did the Corps or Army 23 independently monitor the DAPL protests?</p> <p>24 A. Can you -- can you explain what you mean 25 by "independently monitor"?</p>
<p style="text-align: right;">Page 39</p> <p>1 or related forums in which you participated with 2 others?</p> <p>3 A. Sir, are you refer -- are you referring 4 specifically to the Dakota Access Pipeline or just in 5 general?</p> <p>6 Q. Dakota Access Pipeline. All of these 7 questions were prefaced by during the time period and 8 your involvement in the Dakota Access Pipeline 9 protests.</p> <p>10 A. Yes, sir. No, there were no other forums 11 that I participated in, sir.</p> <p>12 Q. Okay. Other than the NSC process and your 13 conversations with others in the Corps, what sources of 14 information did you rely upon for updates on the Dakota 15 Access Pipeline protests?</p> <p>16 A. Sir, mostly, I took my information from my 17 own chain of command; from what was being reported up 18 from the Omaha District, John Henderson's organization, 19 through his higher headquarters in Portland 20 Northwestern Division. And so we used that information 21 that was reported as our basis of fact.</p> <p>22 Q. Okay. Did you independently reach outside 23 of that -- that area of -- of communication and 24 individuals for anything else as a source of 25 information?</p>	<p style="text-align: right;">Page 41</p> <p>1 Q. Did the Corps or the Army use its own 2 resources on the ground at the Dakota Access Pipeline 3 protests to assess their nature, size, and location?</p> <p>4 A. We used our personnel who were assigned to 5 the Lake Oahe Project office and folks who were with -- 6 doing their normal duties. Those were the ones that we 7 had. And we sent at some point -- probably in the 8 December time frame or the November time frame, I don't 9 remember exactly, we put a liaison officer in the State 10 EOC so that General Dohrmann had someone there all the 11 time that he could turn to at all hours that could, you 12 know, reach Corps of Engineer decision-makers or other 13 leaders.</p> <p>14 Q. How about monitoring the protests 15 themselves; like I said, size, location, people in the 16 camps? Did you have any people inside any of the camps 17 located on Corps property?</p> <p>18 A. I don't know specifically where our 19 project personnel were, but the project personnel who 20 were assigned to the Lake Oahe office were doing their 21 normal duties. I don't know if they were in the camps. 22 They were certainly liaison -- liaising with the 23 Standing Rock Sioux leadership, but I don't recall 24 specifically having anything other than our normal 25 project team there on the ground.</p>

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<p style="text-align: right;">Page 42</p> <p>1 Q. Did -- did the Corps use any technology to 2 monitor or surveil the camps?</p> <p>3 A. I don't recall us doing any of that, no.</p> <p>4 Q. Did you speak with any other federal 5 agency or individual representing a federal agency that 6 did?</p> <p>7 A. No, sir, I did not.</p> <p>8 Q. Did you receive any briefings or 9 information of any kind from the Federal Bureau of 10 Investigation?</p> <p>11 A. Sir, I don't recall receiving anything 12 from the FBI.</p> <p>13 Q. How about from the Bureau of Indian 14 Affairs?</p> <p>15 A. Sir, as part of the National Security 16 Council meetings that I described earlier, the Bureau 17 of Indian Affairs people that participated in that -- 18 again, I don't know who they were, specifically -- but 19 they were reporting what their agents on the ground 20 were reporting. And they were sharing that information 21 with -- with the folks on the -- on that National 22 Security Council call.</p> <p>23 Q. And were the Corps -- or the Bureau of 24 Indian Affairs agents on the ground, using your 25 words -- does "on the ground" mean inside the camps</p>	<p style="text-align: right;">Page 44</p> <p>1 communication was done via email as well.</p> <p>2 Q. Okay. And when you talk about Colonel 3 Henderson being a -- a person that provided you 4 information, where did General Henderson get -- pardon 5 me, Colonel Henderson get his information if the Corps 6 was not otherwise independently monitoring or 7 surveiling the camps located on Corps property?</p> <p>8 MS. ZILIOLI: Objection, speculation.</p> <p>9 A. So, Colonel Henderson was very visibly 10 present. He spent a good bit of time on the ground in 11 North Dakota. I don't know specifically where he was, 12 but I do know that he liaised very closely with General 13 Dohrmann. And he liaised very closely with the 14 Chairman of the Standing Rock Sioux Tribe, Dave 15 Archambault. And he spent a lot of time, John 16 Henderson did, engaging with all of the tribal leaders 17 who were there and participating, all trying to work to 18 find a solution to the concerns that they had expressed 19 there on the ground.</p> <p>20 So John was -- had the most authoritative 21 source of information; based on his presence, the 22 information he was receiving from his staff at the Lake 23 Oahe Project office, and from his ongoing conversations 24 with the leaders of North Dakota, and also of the -- 25 the tribes that were involved in what was going on</p>
<p style="text-align: right;">Page 43</p> <p>1 located on Corps property?</p> <p>2 A. Sir, they were on the ground -- they were 3 there physically in North Dakota. I don't know 4 specifically where they were.</p> <p>5 Q. Okay. But you don't know that they were 6 actually surveilling or monitoring the DAPL protests at 7 the location of the camps located on Corps property?</p> <p>8 A. No, sir, I don't know specifically what 9 they were doing.</p> <p>10 Q. Okay. But you also don't know whether 11 they were even inside the camps, correct?</p> <p>12 A. No, sir. I don't know where they were.</p> <p>13 Q. Okay. General Jackson, when you've been 14 using the term, or do in your communications that we'll 15 go through in a moment, you use the term you "gathered 16 intelligence or gained intelligence." What kind of 17 intelligence did you receive, other than the kind that 18 you've told me to date at this point of your 19 deposition?</p> <p>20 A. Sir, the only information that I received 21 was information that was passed up by word of mouth or 22 through situation reports that came from either John 23 Henderson and General Spellmon, that I received 24 telephonically, or that their operation centers put in 25 in official reports and sent up; or some of that</p>	<p style="text-align: right;">Page 45</p> <p>1 there in North Dakota.</p> <p>2 Q. (BY MR. SEBY) Okay. General Jackson, did 3 you independently ever speak with either Governor of 4 the State of North Dakota?</p> <p>5 A. I did not speak with the Governor of North 6 Dakota, no, sir.</p> <p>7 Q. Ever?</p> <p>8 A. Not about Dakota Access Pipeline, no, sir.</p> <p>9 Q. Okay. Or the protests?</p> <p>10 A. No, sir. I didn't speak with the Governor 11 of North Dakota about the protests.</p> <p>12 Q. Okay. Do you know, General Jackson, 13 whether the other federal -- other agencies of the 14 United States Government independently monitored or 15 surveilled the camps located on Corps property?</p> <p>16 A. No, sir. I have no idea of what the other 17 agencies did.</p> <p>18 Q. Are you aware of whether the United States 19 Government, through any of its associated agencies, 20 used any technologies to monitor inside or the 21 movements of the camps located --</p> <p>22 A. No, sir, I'm not aware.</p> <p>23 Q. Okay.</p> <p>24 A. No, sir, I'm not -- I'm not aware of 25 anything.</p>

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<p style="text-align: right;">Page 46</p> <p>1 Q. No one ever told you that Bureau A or 2 Bureau B or Division X or Division Y was using any 3 technology to monitor the happenings inside the camps 4 located on Corps property?</p> <p>5 A. No, sir, I'm not aware of anything. No, 6 sir.</p> <p>7 Q. So how did you know what was going on in 8 the camps?</p> <p>9 A. Sir, the only information that I received, 10 as I mentioned before, I received either from voice 11 reports from Colonel Henderson, which he gathered from 12 his frequent visits onsite and his conversations with 13 the leadership there in North Dakota and with the -- 14 the tribes, or from the reports that came up from the 15 project office there at Lake Oahe that went through 16 Omaha District, Northwestern Division, and then up to 17 me.</p> <p>18 Q. No one ever told you, "Hey, Ed," or, "Hey, 19 General Jackson, we've got this agency of the federal 20 government with eyes on or informants in the camps 21 located on Corps property. Here is what we're seeing 22 happening, and here's what those people are doing or 23 planning on doing"? You never were aware of any of 24 that?</p> <p>25 A. I wasn't aware, sir, of any agencies that</p>	<p style="text-align: right;">Page 48</p> <p>1 MS. ZILIOLI: Objection, assumes facts not 2 in evidence.</p> <p>3 A. Sir, I'm not -- I'm not aware, 4 specifically, of -- of any directive like the one you 5 mentioned.</p> <p>6 Q. (BY MR. SEBY) Nothing from Colonel 7 Henderson directing them to stay away for their safety 8 and to not engage with the Corps (sic)?</p> <p>9 MS. ZILIOLI: Same objection.</p> <p>10 A. Sir, I don't know specifically what 11 Colonel Henderson told his staff.</p> <p>12 Q. (BY MR. SEBY) Okay. But you weren't 13 advised of that by email or verbally?</p> <p>14 A. Sir, I don't recall if I was or not.</p> <p>15 Q. Okay. How about with respect to Corps 16 properties around the United States due to opposition 17 to the Dakota Access Pipeline Project?</p> <p>18 A. Sir, I'm not sure I understand your 19 question. Could you restate it, please?</p> <p>20 Q. What direction did you make to any Corps 21 individual or employee, in the entire country, with 22 regard to keeping distance or staying away from 23 protests, either in the state of North Dakota or any 24 state of the United States with respect to the Corps' 25 role in the Dakota Access Pipeline?</p>
<p style="text-align: right;">Page 47</p> <p>1 had anybody inside the camps that were doing any type 2 of -- I think you used the word "intel gathering." But 3 I don't recall getting any information about anything 4 like that, other than what was -- what you could see 5 visually from our project office folks who were in Lake 6 Oahe doing their -- doing their job of managing that 7 project.</p> <p>8 Q. Did the Corps assign or direct Lake Oahe 9 Project people to stand on a hillside above the protest 10 camps, 24/7, with binoculars? Is that how it worked, 11 or what did they -- what did those people do and with 12 what frequency did they monitor the camps?</p> <p>13 A. Sir, I don't know exactly what actions 14 were taken by the Lake Oahe Project office personnel, 15 so I can't answer that question.</p> <p>16 Q. Okay. But you said they did something, 17 right?</p> <p>18 A. Sir, they reported what information they 19 knew, and that's what information was sent up to me.</p> <p>20 Q. Okay.</p> <p>21 A. How they -- how they did that, I don't 22 know, specifically.</p> <p>23 Q. Were you aware that the Corps leadership 24 directed the Lake Oahe Project personnel to stay away 25 from the camps?</p>	<p style="text-align: right;">Page 49</p> <p>1 A. Sir, I don't recall any directive that was 2 given for people to do anything regarding the Dakota 3 Access Pipeline, as you describe.</p> <p>4 Q. Do you recall the -- the various protests 5 that occurred around the country and offices of the 6 U.S. Army Corps of Engineers concerning the Dakota 7 Access Pipeline?</p> <p>8 A. Sir, I am aware that there were protests; 9 yes, sir.</p> <p>10 Q. And what instruction did the Corps or the 11 Department of the Army give to personnel at Corps 12 offices around the country with respect to how to 13 conduct themselves at the time of those protests?</p> <p>14 A. Sir, I'm not aware of any specific 15 directive that was given. Although, there are standard 16 protocols in place for force protection at all federal 17 facilities, and I'm sure that those were the ones that 18 were followed in this case.</p> <p>19 Q. Okay. And have you ever been to the state 20 of North Dakota, General Jackson?</p> <p>21 A. Yes, sir, I have.</p> <p>22 Q. And what were the purposes of your trips 23 or trip?</p> <p>24 A. Sir, I visited North Dakota one time for a 25 Fargo-Moorhead Flood (sic) Diversion Project meeting.</p>

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<p style="text-align: right;">Page 50</p> <p>1 It was unrelated to the Dakota Access Pipeline. And 2 I -- after the protest was over, I recall visiting the 3 regulatory office of the Omaha District. This was 4 probably in March or April of 2017, just to talk to 5 the -- the regulatory staff that was involved with the 6 permitting of the project.</p> <p>7 Q. Why did you make that trip?</p> <p>8 A. Sir, that was standard practice. As the 9 deputy commanding general, I often visited projects, 10 visited districts, to check on our people, get a better 11 understanding of the missions that -- that they do and 12 to thank them for their service. And that's what I did 13 there.</p> <p>14 Q. After the fact?</p> <p>15 A. It was after the fact; yes, sir.</p> <p>16 Q. Okay. You're aware that the Corps of Engineers is the manager of the Oahe Project -- what's known as the Oahe Project?</p> <p>19 A. Sir, the -- the -- Lake Oahe is a federal project managed by the U.S. Army Corps of Engineers; yes, sir.</p> <p>22 Q. And what is the purpose of the Lake Oahe Project?</p> <p>24 A. Sir, as I recall, it's a flood control reservoir.</p>	<p style="text-align: right;">Page 52</p> <p>1 A. Yes, sir.</p> <p>2 Q. So the Corps is the managing authority for lands associated with and part of a water flood control project?</p> <p>5 A. If it's a Corps of Engineers flood control project, yes, sir.</p> <p>7 Q. Okay. Do you know whether or not the United States or the Corps ever delegated responsibility for the use or management of the Corps Oahe Project?</p> <p>11 MS. ZILIOLI: Objection to the extent it calls for a legal conclusion.</p> <p>13 A. Sir, can you -- when you say "delegated," I'm not sure I understand. It was the responsibility of the Omaha District to manage, and they did so through their staff at the -- that were onsite. So I don't know if that answers your question.</p> <p>18 Q. (BY MR. SEBY) It -- it does not. The question is, did the Corps -- regardless of which office in the Corps -- but did the Corps or the United States ever formally delegate, i.e., give away, responsibility for managing lands under the jurisdiction of the Corps to anyone outside of the Corps? Let's start with anyone within the United States Government.</p>
<p style="text-align: right;">Page 51</p> <p>1 Q. And is there a dam associated with the flood control reservoir?</p> <p>3 A. Sir, I believe there is. I don't -- I don't know the specifics or I can't recall the specifics of Lake Oahe and -- and all the different purposes that it has.</p> <p>7 Q. Are you aware of whether or not the Lake Oahe Project is solely limited to the U.S. navigable waterway known as the Missouri River, or are there lands associated with the Corps' area of management that's under the Lake Oahe Project title?</p> <p>12 A. Sir, most federal projects, like Lake Oahe, have other lands associated with them, but it varies from project to project. So I don't know the extent -- I can't recall, exactly, the extent of the project boundaries associated with the federal project at Lake Oahe.</p> <p>18 Q. And who is responsible for the management of those associated lands with flood control projects?</p> <p>20 A. Sir, typically, the district that's responsible geographically for that project is responsible for the lands that are associated with that project.</p> <p>24 Q. The district of the U.S. Army Corps of Engineers?</p>	<p style="text-align: right;">Page 53</p> <p>1 MS. ZILIOLI: Same objection.</p> <p>2 A. Sir, I'm not aware -- I'm not aware of that; no, sir.</p> <p>4 Q. (BY MR. SEBY) So no -- no federal agency was given authority, outside of the Corps, to manage its property?</p> <p>7 MS. ZILIOLI: Same objection.</p> <p>8 A. Sir, I don't recall that being the case. I don't recall ever hearing of an instance like that.</p> <p>10 Q. (BY MR. SEBY) Okay. How about same question, General, with respect to the State of North Dakota? Did the Corps ever delegate management authority for the Corps lands associated with the Oahe Project to the State of North Dakota?</p> <p>15 MS. ZILIOLI: Objection, legal conclusion.</p> <p>16 A. Sir, I don't -- I don't recall that that was ever done, but I don't know if it was some unique waiver that was granted at some point in time. I'm just not aware of it. But that's not normal process.</p> <p>20 Q. (BY MR. SEBY) In fact, doing something like that would be similar to granting an easement that would require Congressional approval, would it not?</p> <p>23 MS. ZILIOLI: Same objection.</p> <p>24 A. There are easements granted over federal property, and the Corps real estate and legal teams are</p>

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<p style="text-align: right;">Page 54</p> <p>1 involved in assessing those when those requests are 2 made. And so I know that there is a provision for use 3 of, but not delegation of authority for, if that makes 4 a difference legally.</p> <p>5 Q. (BY MR. SEBY) How about same question, 6 General, with respect to, did the Corps or the United 7 States Government, at large, delegate any authority 8 management thereof of Corps properties associated with 9 the Lake Oahe Project to any federally recognized 10 Native American tribe?</p> <p>11 MS. ZILIOLI: Objection, legal conclusion.</p> <p>12 A. Sir, I'm not aware of that.</p> <p>13 Q. (BY MR. SEBY) Did the Corps ever formally 14 delegate authority for the management of its land 15 associated with the Lake Oahe Project to any protester 16 in the camps that were set up on Corps property during 17 the period of approximately August of 2016 through 18 approximately April of 2017?</p> <p>19 MS. ZILIOLI: Same objection.</p> <p>20 A. Delegate? I'm not sure I understand your 21 question. But if you're saying that, did the Corps 22 delegate authority to a tribe to manage the land, I 23 don't -- I'm not aware that that was the case.</p> <p>24 Q. (BY MR. SEBY) I'll interrupt you, sir, 25 just to clarify, so that we're -- we're getting the</p>	<p style="text-align: right;">Page 56</p> <p>1 exhibits now, largely for the balance of the next 2 couple of hours, to walk through documents that have 3 been produced by your counsel for the United States, 4 many of which are your emails or email chains in which 5 you were a conversant, a participant.</p> <p>6 MR. SEBY: So if we could go to 7 Exhibit 684, please, to start.</p> <p>8 Q. (BY MR. SEBY) And this -- this exhibit 9 and email chain is -- is three pieces. The first one, 10 at the very bottom, you -- you asked General Spellmon 11 what -- you, on behalf of Chief -- the Chief -- you're 12 referring to Chief (sic) Semonite right there in that 13 opening sentence? If we could look at that email, the 14 bottom one.</p> <p>15 A. Yes, sir, I'm looking at it. I can see it 16 at the bottom.</p> <p>17 Q. Okay. It says, "Sorry to bombard you with 18 emails today. Chief asked me what position Governor 19 Dalrymple had taken on this issue." And the subject 20 matter is "Three Affiliated Tribes Land Transfer." 21 What does -- can you recall and tell me what that 22 involved?</p> <p>23 A. Sir, I don't -- I don't recall what that 24 involved at all. I recall the title, but I don't 25 recall what it was in reference to. And I'm not sure</p>
<p style="text-align: right;">Page 55</p> <p>1 question understood so you can answer it. Did the 2 Corps or the United States Government ever delegate 3 authority to any protester or group of protesters to 4 manage the Corps property during the period of the 5 protests that I just identified, August 2016 to April 6 2017?</p> <p>7 MS. ZILIOLI: Objection, legal conclusion.</p> <p>8 A. Thanks for clarifying. No, sir, I'm not 9 aware of that. That would not be normal process.</p> <p>10 Q. (BY MR. SEBY) Sure.</p> <p>11 MR. SEBY: Let's take a break, General 12 Jackson, Ms. Zilioli, if that's acceptable? Ten 13 minutes?</p> <p>14 THE DEPONENT: Yes, sir.</p> <p>15 MS. ZILIOLI: Sounds good.</p> <p>16 MR. SEBY: Come back at 9:50 Mountain, if 17 we could, please.</p> <p>18 THE DEPONENT: Yes, sir.</p> <p>19 THE VIDEOGRAPHER: Going off the record. 20 The time is 3:37 p.m. UTC, 9:37 a.m. Mountain. 21 (Recess, 9:37 a.m. to 9:50 a.m. MDT.)</p> <p>22 THE VIDEOGRAPHER: We are back on the 23 record. The time is 3:50 p.m. UTC, 9:50 a.m. Mountain. 24 Q. (BY MR. SEBY) General Jackson, we're back 25 after a short break. And I'd like to turn to some</p>	<p style="text-align: right;">Page 57</p> <p>1 it had anything to do with DAPL, but I -- I can't 2 confirm that. I just don't remember.</p> <p>3 Q. Okay. Then General Spellmon responded to 4 you with an email, the one right above that.</p> <p>5 MR. SEBY: If we could blow that up a 6 little bit, Rachel, please.</p> <p>7 Q. (BY MR. SEBY) I want to make sure you can 8 read it, General Jackson. Right there. There it is, 9 middle piece right there.</p> <p>10 A. Can you -- can you bring it -- can you 11 make it smaller again, that way I -- oh, well, never 12 mind. It's good right there. Thank you.</p> <p>13 Q. Can you read that?</p> <p>14 A. Yes, sir. Give me just a second to take a 15 look at it.</p> <p>16 Q. Yup.</p> <p>17 A. (Deponent examined document.) Okay.</p> <p>18 Q. Okay. So I want to ask you a few things 19 about this and -- because above, you say -- there 20 appears to have been some confusion. General Spellmon 21 was giving you a DAPL update, when I think you were 22 asking him for an update on the three affiliated tribes 23 land transfer. Does that come back to you now? You 24 can see what your own words were, right?</p> <p>25 A. Yes, sir. That's -- as I mentioned, I</p>

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<p style="text-align: right;">Page 58</p> <p>1 thought that was two separate issues.</p> <p>2 Q. Yeah, sure. And so -- but General</p> <p>3 Spellmon tells you, and you respond, ". . . tracking</p> <p>4 his position on the DAPL." I think you're referring to</p> <p>5 the Governor, correct?</p> <p>6 A. Sir, that's -- that's what it appears I am</p> <p>7 referring to. I don't remember, specifically.</p> <p>8 Q. Sure. In fact, the email says, from</p> <p>9 General Spellmon, he's not spoken with the Governor,</p> <p>10 but John Henderson spoke with him that morning of</p> <p>11 August 22nd. And -- and he's talking about</p> <p>12 extrapolating the text of the Governor's executive</p> <p>13 order and emergency declaration for the southwest and</p> <p>14 south-central part of the state of North Dakota.</p> <p>15 And the second paragraph of the -- of the</p> <p>16 emails says, "In short, his" -- that would be Governor</p> <p>17 Dalrymple -- "primary concern is upholding the right to</p> <p>18 peaceful protest-AND-" -- in capitals -- "public</p> <p>19 safety. The common assessment from the field is [that]</p> <p>20 the Standing Rock Sioux Tribe protests have crossed the</p> <p>21 line and are longer completely peaceful . . ."</p> <p>22 And you go down a paragraph -- two</p> <p>23 paragraphs from there, and it says that Colonel</p> <p>24 Henderson reported in correspondence to you, previous</p> <p>25 to this correspondence, that the Governor has asked the</p>	<p style="text-align: right;">Page 60</p> <p>1 look at now, is dated the day prior. So it -- it was</p> <p>2 the date that Colonel Spellmon said this would be</p> <p>3 coming out. And if we look at the storyboard</p> <p>4 attachment here to --</p> <p>5 A. Can I -- can you go back, sir? Can I --</p> <p>6 can I read what that email said, real quick? You were</p> <p>7 going -- you were moving it too fast. I'd just like to</p> <p>8 read it just a second --</p> <p>9 Q. Yeah, you can read -- you can read it --</p> <p>10 hold on, sir. You can read the part I'm asking you</p> <p>11 about. The rest of it is unrelated. And it's also</p> <p>12 just transmitting the storyboard. So I don't want to</p> <p>13 burn up time reading stuff that's -- that's just</p> <p>14 forwarding things. Top email, the one addressed to</p> <p>15 you, please read that, for sure.</p> <p>16 A. (Deponent examined document.) Okay.</p> <p>17 Thank you.</p> <p>18 Q. Now we'll go to the storyboard, which is</p> <p>19 the first Corps storyboard, dated August 23rd. Do you</p> <p>20 know, General Jackson, how soon after the protesters</p> <p>21 showed up on Corps of Engineers property at the Lake</p> <p>22 Oahe Project that it took for the Corps to begin to</p> <p>23 produce these storyboards reporting the situation and</p> <p>24 get provided background?</p> <p>25 A. Sir, I don't remember specifically how --</p>
<p style="text-align: right;">Page 59</p> <p>1 Corps of Engineers to -- or told the Corps of Engineers</p> <p>2 that he strongly opposes the granting of any special</p> <p>3 use permit for the staging of protest areas on Corps</p> <p>4 property and that -- he tells you, you under -- he</p> <p>5 understood that the Omaha District Office of the Corps</p> <p>6 had received its first special use permit application</p> <p>7 and is working through that process.</p> <p>8 Last paragraph says -- Spellmon</p> <p>9 acknowledges the requirement for a daily storyboard</p> <p>10 beginning tomorrow, where ". . . we" -- the Corps --</p> <p>11 "will capture any key updates."</p> <p>12 MR. SEBY: So the -- the next exhibit is</p> <p>13 686. And if we would go to that, please.</p> <p>14 Q. (BY MR. SEBY) This is an email, the top</p> <p>15 one, which is all that matters, and the attachment that</p> <p>16 I'll show you in a moment, but Ms. Karen Aguilera --</p> <p>17 Durham-Aguilera sends to you -- you're one of the</p> <p>18 addressees, along with Ms. Darcy and Chief Semonite.</p> <p>19 You're the Major J, right, Major General J?</p> <p>20 A. Yes, sir, it would appear that to me.</p> <p>21 Q. Yeah, me too, because you're the top</p> <p>22 addressee of the email. It says, the "First storyboard</p> <p>23 attached for the Dakota Access Pipeline issue." And</p> <p>24 this is -- the email is dated August 24th and the</p> <p>25 attachment, which is this first storyboard that we'll</p>	<p style="text-align: right;">Page 61</p> <p>1 what the time lapse was from the time they -- the first</p> <p>2 protesters started showing up and when this was</p> <p>3 produced. We communicated regularly. This was a</p> <p>4 product that was developed to help keep everybody on</p> <p>5 the same sheet of music and to provide some visual</p> <p>6 reference to some of the locations that people had been</p> <p>7 talking about and to try and deconflict some other</p> <p>8 activities that were ongoing at the time, such as the</p> <p>9 three affiliated tribes land transfer, which you</p> <p>10 referred to in a previous email.</p> <p>11 Q. But you told me you didn't recall what</p> <p>12 that involved at all, so I don't want to talk more</p> <p>13 about stuff that you don't remember. So let's go to</p> <p>14 what this -- the text on the right says under</p> <p>15 "Additional Background."</p> <p>16 A. Okay. Can you -- are you going to blow</p> <p>17 that up -- oh, thank you.</p> <p>18 Q. It is. Right there, first bullet says</p> <p>19 what, please?</p> <p>20 A. Are you asking me to read it back to you?</p> <p>21 Q. Yes.</p> <p>22 A. "Protesters set up a 'spirit camps' on</p> <p>23 Corps property south of the pipeline construction</p> <p>24 site."</p> <p>25 MR. SEBY: Okay. Now, if we could go to</p>

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<p style="text-align: right;">Page 62</p> <p>1 the "Legend," the inset of the map, please, to the 2 left.</p> <p>3 Q. (BY MR. SEBY) So, do you see the blue -- 4 robin's egg blue color there on the legend?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And what does that blue stand for in the 7 Corps legend on the storyboard?</p> <p>8 A. It says it's the USACE Reservoir Project.</p> <p>9 MR. SEBY: Okay. Now, if we could go to 10 the inset map diagram on the -- the map there, feature. 11 Right there.</p> <p>12 Q. (BY MR. SEBY) Do you see that, sir?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And you just talked about protesters 15 setting up camps on Corps property. You see a Camp 16 North there within the robin's egg blue denoting Corps 17 property, Reservoir Project property?</p> <p>18 A. Yes, sir, I see that indication on the 19 map.</p> <p>20 Q. Does that, in your opinion, mean that 21 there is a protest camp set up on Corps of Engineers 22 property, at least as of August 23, 2016?</p> <p>23 A. Sir, if I'm reading this map correctly, 24 then it would appear that it's pointing into the blue 25 that would indicate Corps property; yes, sir.</p>	<p style="text-align: right;">Page 64</p> <p>1 Chief. So you are writing to Ms. Darcy and Chief 2 Semonite, and you talk about a -- your email right 3 there, the second paragraph, it says, "I was prepped 4 for the requested DAPL call this afternoon [and] was 5 just informed it was no longer required." What DAPL 6 call was that referencing to?</p> <p>7 A. Sir, give me just a second to read this so 8 I can understand all the context, please.</p> <p>9 (Deponent examined document.)</p> <p>10 Okay. Thank you for the time, sir. I'm 11 not sure what DAPL call that was referencing, because 12 it doesn't allude to with whom it would be. So I don't 13 know all who -- who that might have been with.</p> <p>14 Q. How about the next sentence? What does 15 that pertain to? Your words, sir. If you will please 16 tell me what you're talking about.</p> <p>17 A. Where it says, "Tracking your call with 18 Mr. Connor . . .?"</p> <p>19 Q. Please continue.</p> <p>20 A. "Providing this" -- "Tracking your call 21 with [Mr] Connor following his discussion with 22 [General]" -- "Governor Dalrymple."</p> <p>23 Q. Yes. What is that all about?</p> <p>24 A. Sir, if I recall, Mr. Connor was the 25 Deputy Secretary for Department of the Interior. So</p>
<p style="text-align: right;">Page 63</p> <p>1 Q. And -- and that means a Corps -- a protest 2 camp has been established on Corps of Engineers 3 property. The Corps acknowledges it with a map that's 4 on the very first storyboard produced for Corps 5 leadership, addressed to Ms. Darcy, Chief Semonite, and 6 Major Jackson, correct?</p> <p>7 A. That would be Major General Jackson; yes, 8 sir.</p> <p>9 Q. Pardon me. I apologize. General Jackson. 10 Got it. Okay. Is that the same with respect to the 11 Camp South located on Corps property?</p> <p>12 A. Sir, by looking at this map, it would 13 appear that the arrow points into the Corps property.</p> <p>14 Q. All right. Thank you.</p> <p>15 A. If that's accurately -- if that's 16 accurately displayed.</p> <p>17 Q. I appreciate the caveat, but it's a Corps 18 storyboard. And I'm just asking you if that's what it 19 appears to you to read as, right?</p> <p>20 A. That's what it appears; yes, sir.</p> <p>21 MR. SEBY: Okay. If we could go to 22 Exhibit 688, 6-8-8.</p> <p>23 Q. (BY MR. SEBY) All right. General 24 Jackson, this is a -- an email that starts with an 25 email from you to Madame Chief -- Madame Secretary and</p>	<p style="text-align: right;">Page 65</p> <p>1 that's -- that's the only relevance I can find. As it 2 appears by this sentence, that Mr. Connor was -- had a 3 call with the Governor of North Dakota, and he had 4 requested to speak with General Semonite or Ms. Darcy. 5 I can't tell, by this note, who it was for.</p> <p>6 Q. And who spoke with -- when you say, 7 "Tracking your call" -- and that's in the past tense, 8 it's already happened -- so what call did Mr. Connor 9 have and with whom and why?</p> <p>10 A. Sir, I don't recall, specifically. I can 11 read that. And I addressed it -- since I addressed it 12 to Ms. Darcy and the Chief, I don't recall which one of 13 them or if both of them were on the call with Secretary 14 Connor, as this -- as this email note would allude to, 15 so . . .</p> <p>16 Q. Okay. Last paragraph of the letter, you 17 say, "Request we hold off on the daily updates until we 18 get more activity, at which time we'll restart," right?</p> <p>19 A. Yes, sir, that's what it says.</p> <p>20 Q. General, can you explain why, after three 21 days of starting the storyboards, where it was directed 22 that they be done on a daily basis for Corps 23 leadership, you were recommending, after just a day or 24 two -- where the first storyboard reported, in fact, 25 just three days prior to this email -- two days --</p>

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<p style="text-align: right;">Page 66</p> <p>1 where the storyboard says people were on Corps 2 property, north and south of the Cannonball River, and 3 they were not being peaceful, why did you feel it was 4 prudent to stop the daily updates to Corps leadership 5 or recommend stopping?</p> <p>6 A. Sir, I don't -- I don't remember why I 7 made that call. I may --</p> <p>8 Q. But you did -- you see that you did 9 request that, right? You just don't know why now or 10 won't be able to say?</p> <p>11 A. Well, I'm not withholding information from 12 you. I just don't remember what the situation was that 13 caused me to make that comment and make that request. 14 And -- and it's unclear from this email, to me, what 15 daily update we're talking about; whether that's a 16 daily update that we were providing to somebody outside 17 the Corps, or if that's somebody that we are providing 18 a daily update to inside the Corps. It's unclear, with 19 this out of context, exactly what daily update I'm 20 talking about. And I apologize that I don't remember, 21 specifically.</p> <p>22 Q. It sure reads to me like you're talking 23 about the storyboards, the daily storyboards that were 24 just asked for a few days prior, that you started, and 25 then now you're suggesting that you hold off on doing</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. What other kind of update were you 2 providing to the Chief and to Ms. Darcy, daily update?</p> <p>3 A. Sir, I provided routine verbal 4 communication to both Ms. Darcy and the Chief, as I 5 mentioned in the early portion of my statement -- or in 6 the earlier portion of the deposition.</p> <p>7 Q. So does that mean that you're telling them 8 that, "I'm not going to talk to you further about the 9 DAPL events until I feel like there's something worth 10 talking about"? Is that what you're saying?</p> <p>11 MS. ZILIOLI: Objection -- objection, 12 mischaracterizes testimony and evidence.</p> <p>13 A. No, sir, that's not what I'm saying.</p> <p>14 Q. (BY MR. SEBY) All right. Let's move on. 15 I don't want to waste time.</p> <p>16 MR. SEBY: Exhibit 690, please.</p> <p>17 Q. (BY MR. SEBY) So this is a -- an email 18 chain that starts with the provision by Army staff to 19 the Secretary of the Army and others, including General 20 Semonite. General Semonite receives it and then 21 changes the "Re" line to say, "LIEUTENANT GENERAL 22 SEMONITE TASKER - LAYDOWN OF PROTEST SITE." And he -- 23 he asks for you to get him a map of the Corps property 24 and the location of the protesters and whether they're 25 on Corps property, so he can take it to a meeting at</p>
<p style="text-align: right;">Page 67</p> <p>1 it until some degree of activity that's -- that's 2 different in your mind, right? That's the way it 3 reads. I wasn't part of the discussion. I'm not you. 4 I didn't write it, but you did. So I'm asking you what 5 you meant?</p> <p>6 A. Well, just --</p> <p>7 MS. ZILIOLI: Objection, asked and 8 answered.</p> <p>9 MR. SEBY: Let's move on to 89.</p> <p>10 A. Sir, may I finish answering the question, 11 please? You asked me a question, and I think I deserve 12 you -- I deserve to give you an answer.</p> <p>13 Q. (BY MR. SEBY) I don't want to waste time 14 if you're just going to tell me the same thing over. 15 So if you have --</p> <p>16 A. Well, I think -- I think on the record -- 17 I think, on the record, you need to get my response. 18 So let me give it to you, please.</p> <p>19 So you -- you talked about a storyboard. 20 This particular comment doesn't mention a storyboard. 21 And there were many ways that we provided updates 22 during the course of this -- this time frame. So I'm 23 not sure that your correlation between this, referring 24 specifically to the storyboard, is accurate. So I just 25 wanted to get that on the record. Thank you.</p>	<p style="text-align: right;">Page 69</p> <p>1 the -- with the Secretary of Army and General Milley 2 the next day. Do you recall that direction, for you to 3 take an action under the auspices of a tasker?</p> <p>4 A. Sir, I don't recall specifically that 5 tasker; but it's certainly in this email, so I'm sure 6 that -- that I received it. And I'm just trying to 7 read it right now to make sure I can familiarize myself 8 to it -- with it.</p> <p>9 (Deponent examined document.)</p> <p>10 Okay. Thank you, sir. I appreciate that.</p> <p>11 Q. Do you have anything to add?</p> <p>12 A. No, sir. This -- this appears, to me, as 13 General Semonite is a very -- an excellent 14 communicator, that he was just trying to make sure that 15 the Army leadership understood, graphically, what they 16 were hearing in the news and what reports they were 17 getting in the media about -- about what was going on 18 and to clarify boundaries and -- and other things, so 19 they would understand where -- where these protesters 20 were in relation to our responsibilities.</p> <p>21 Q. What was wrong with the August 23 22 storyboard? This is two weeks later, and you are being 23 asked to provide and develop a map that contains the 24 graphic information that the Corps had -- you, 25 Ms. Darcy, and General Semonite -- had two weeks prior.</p>

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<p style="text-align: right;">Page 70</p> <p>1 Why this?</p> <p>2 MS. ZILIOLI: Objection, calls for 3 speculation.</p> <p>4 A. Sir, you'll have to ask General Semonite. 5 I'm not sure, specifically. It looks to me like he 6 wants something a little more than what we've been 7 providing already, so . . .</p> <p>8 Q. (BY MR. SEBY) So what -- what did you 9 give him?</p> <p>10 A. Sir, I don't remember. I'm sure I gave 11 him the map that he asked for.</p> <p>12 Q. Do you recall specifically doing that or 13 not?</p> <p>14 A. Sir, I don't remember specifically doing 15 that.</p> <p>16 Q. Okay. Do you --</p> <p>17 A. I'm sure it would be standard practice. 18 It would have been standard for me to provide 19 information that he had asked for, so I'm sure I did.</p> <p>20 Q. So where is it?</p> <p>21 A. I don't know, sir.</p> <p>22 Q. Okay. We don't have it, so I'm curious. 23 That's why I'm asking you. I appreciate what you think 24 standard practice may have been; but I'm asking you, do 25 you know whether you did it here or not?</p>	<p style="text-align: right;">Page 72</p> <p>1 September 9, 2016. And the -- underneath that, the 2 crest of three federal agencies. Do you see that; the 3 Department of the Interior, Department of Justice, and 4 the U.S. Army Corps of Engineers?</p> <p>5 A. Yes, sir, I see that.</p> <p>6 Q. Okay. If you would read the introduction 7 by the Department of the Interior to the Joint 8 Statement that comes from you-all.</p> <p>9 A. You want me to read it to you, sir?</p> <p>10 Q. No. I'd like you to read it so I can ask 11 you questions about it, please.</p> <p>12 A. Oh, okay. Okay. Thanks. (Deponent examined document.)</p> <p>13 Okay. Thank you.</p> <p>14 Q. Have you read the entire statement, Joint 15 Statement?</p> <p>16 A. I read what you -- that -- those three 17 paragraphs at the very top that you're showing on the 18 screen; yes, sir.</p> <p>19 Q. Okay. Any questions or comments you want 20 to make about that introductory piece? I'm -- I'm not 21 going to ask you about that. I want to ask you about 22 the statement below. I just didn't want to go right to 23 it and have you tell me you needed to read the top part 24 first. So please read, now, the Joint Statement from</p>
<p style="text-align: right;">Page 71</p> <p>1 A. Without -- without evidence of it, I can't 2 confirm to you that I produced a map and gave it to 3 General Semonite, as this email suggests. I'm just 4 saying that it would be unusual for me --</p> <p>5 Q. I don't -- I don't have an email from you 6 that shows that you ever did it. So I'm not saying 7 anything. But the fact is, I don't know whether you 8 did it.</p> <p>9 A. Nor do I.</p> <p>10 Q. Okay. Even though you're the person 11 tasked with doing it, correct?</p> <p>12 A. Yes, sir, I was --</p> <p>13 Q. Okay.</p> <p>14 A. -- tasked with doing it. As I mentioned, 15 I'm sure I did it.</p> <p>16 MR. SEBY: If we could go to Exhibit 494, 17 please.</p> <p>18 Q. (BY MR. SEBY) If you'd take a moment and 19 read this document. It's a copy -- this is an email 20 that came from Secretary Sally Jewell, the Department 21 of the Interior email production. And it's -- the 22 subject line says, "Joint Statement from the Department 23 of Justice, the Department of the Army and the 24 Department of the Interior regarding Standing Rock 25 Sioux Tribe V. U.S. Army Corps of Engineers," dated</p>	<p style="text-align: right;">Page 73</p> <p>1 the Department of Justice, Army, and Interior.</p> <p>2 A. Okay. Thank you, sir. (Deponent examined document.)</p> <p>3 Okay. Sir, I've read down to that line 4 that says DOI, underscore --</p> <p>5 Q. We're scrolling up. You can continue 6 reading, please.</p> <p>7 A. Okay. Thanks. (Deponent examined document.)</p> <p>8 Okay, sir.</p> <p>9 Q. Okay. That's now the end of the 10 statement. So I want to ask you about the statement 11 itself. Did you participate in the development of the 12 Joint Statement?</p> <p>13 A. No, sir, I did not.</p> <p>14 Q. In any manner?</p> <p>15 A. No manner whatsoever.</p> <p>16 Q. Were you aware of it, prior to it being 17 issued as a formal statement of the United States 18 Government by three agencies under their letterhead and 19 seals?</p> <p>20 A. No, sir, I was not.</p> <p>21 Q. Not aware at all prior to?</p> <p>22 A. Not at all aware prior to.</p> <p>23 Q. Got it. Okay. How does -- now that</p>

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<p style="text-align: right;">Page 74</p> <p>1 you've read it, were you ever aware of it previously? 2 I appreciate you didn't know about it before it was 3 finalized and released, but did you subsequently become 4 aware of it?</p> <p>5 A. Yes, sir, I did.</p> <p>6 Q. And what was your feeling about it when 7 you first became aware of it?</p> <p>8 A. Well, my feeling was that I needed to go 9 back to Secretary Darcy, who I believe signed it, to 10 make sure I understood what information she needed for 11 that permit decision to be made; because that was 12 the -- that was the reason that this memo was created, 13 as I understand it.</p> <p>14 Q. When was it created?</p> <p>15 A. It's dated 9 September, according to this 16 email.</p> <p>17 Q. Was it written in one day?</p> <p>18 A. I had nothing to do with it. I had 19 nothing to do with it, had no prior knowledge of it 20 before it was published, so I can't answer that 21 question.</p> <p>22 Q. Okay. How do you feel about what you read 23 in this statement?</p> <p>24 A. It gives direction what the federal 25 government wants to do with regard to the environmental</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. All right. Do you think that the Joint 2 Statement had the effect of emboldening and redoubling 3 the protest -- protests on Corps property?</p> <p>4 MS. ZILIOLI: Objection, assumes facts.</p> <p>5 A. Sir, I don't -- I don't have any idea what 6 this statement may have done.</p> <p>7 Q. (BY MR. SEBY) Do you -- do you agree with 8 me that the overall tone of the press -- of this 9 September 9 release strongly favors the protesters on 10 Corps property?</p> <p>11 MS. ZILIOLI: Objection, misstates 12 evidence.</p> <p>13 A. No, sir, I do not.</p> <p>14 Q. (BY MR. SEBY) Why not?</p> <p>15 A. Sir, in my opinion, this -- this Joint 16 Statement is asking us to do a level of due diligence 17 that the authors of this document felt needed to be 18 done, above and beyond what's required, for us to be 19 able to have the information needed for the permit for 20 the Dakota Access Pipeline construction project to 21 continue. And so --</p> <p>22 Q. Were you puzzled by the -- I'm sorry. Go 23 ahead.</p> <p>24 A. No. Go ahead, sir.</p> <p>25 Q. I -- I didn't want to interrupt you if you</p>
<p style="text-align: right;">Page 75</p> <p>1 permitting. And it gives clear direction that there's 2 more consultations that will have to occur before 3 that -- a determination is made.</p> <p>4 Q. Okay.</p> <p>5 A. It's giving me a task.</p> <p>6 Q. Yeah. All right. How do you feel about 7 the fact that earlier, the same day this was released, 8 a United States District Court judge in Washington, 9 D.C. ruled in the favor of the Corps and the Department 10 of the Army rejecting a challenge seeking a preliminary 11 injunction by the -- by several tribes, which include 12 the Standing Rock Sioux Tribe? Is that contrast 13 apparent to you; that you won that case, the Government 14 won, yet this is being announced?</p> <p>15 A. Well, sir, I don't think it matters how I 16 feel, because the folks that have the authority to make 17 these decisions are --</p> <p>18 Q. It matters, because I'm asking you a 19 question and I'm entitled to do so. So I'm asking you 20 for your position. I'm not asking you whether it 21 matters or not.</p> <p>22 A. Well, my position would be that my senior 23 officials told me, "This is what we're going to do," 24 and so that's -- that's what we're going to do -- 25 that's what I do.</p>	<p style="text-align: right;">Page 77</p> <p>1 were still talking.</p> <p>2 A. I forgot what I was going to say. I'm 3 sorry.</p> <p>4 Q. Were you puzzled why this direction came? 5 I appreciate you -- you respected it as a directive 6 from -- from senior officials to you and others. But 7 were you puzzled by it, given the fact that the Corps, 8 in the normal course through the district leadership of 9 Colonel Henderson -- given you'd also been a district 10 commander in the past, you told me, was it puzzling to 11 you that that -- those decisions by a peer, Colonel 12 Henderson, were being put on ice, asked to be suspended 13 or being reviewed? You can characterize it however you 14 wish, but were you puzzled by that direction?</p> <p>15 MS. ZILIOLI: Objection, misstates 16 evidence.</p> <p>17 A. Sir, as I recall at the time, I wasn't 18 puzzled, because the level of authority required to 19 sign the documentation at question was at the Secretary 20 level -- secretariat level. So it was just apparent to 21 me that there was more information -- more actions that 22 were needed to be taken for those officials -- or that 23 official, Ms. Darcy, to be comfortable in taking action 24 in -- on an issue that had obviously become very 25 complicated.</p>

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<p style="text-align: right;">Page 78</p> <p>1 And so I respect that decision. And I 2 wasn't puzzled, I was just anxious to engage to get 3 started to do whatever she wanted me to do; because I 4 have trust and confidence that she was making the best 5 decision, given all the information that she knew at 6 the time about the situation.</p> <p>7 Q. (BY MR. SEBY) What are the complications 8 of the issue that you were referring to?</p> <p>9 A. The complications are the views that the 10 Native Americans have about the Oahe Lake Project, in 11 general, and the sacred nature that they feel about the 12 land, for which I have great respect. And obviously 13 with this protest, they were indicating to the federal 14 government that there was more work that we needed to 15 do.</p> <p>16 And the complication that I referred to is 17 trying to figure out how best to do that, with all the 18 parties that were a part of these actions and these 19 decisions, as they were going to -- as we were going to 20 move forward on. So that's -- that's -- that's what 21 I'm referring to.</p> <p>22 Q. Are you saying that the Oahe Project is 23 located on lands that belong to the Standing Rock Sioux 24 Tribe?</p> <p>25 A. The Lake Oahe Project is on federal</p>	<p style="text-align: right;">Page 80</p> <p>1 A. Sir, I do not know.</p> <p>2 Q. (BY MR. SEBY) Did Mr. Lowry Crook work on 3 this statement for Secretary Darcy?</p> <p>4 MS. ZILIOLI: Same objection.</p> <p>5 A. Sir, I don't know. That's a question for 6 Lowry Crook.</p> <p>7 Q. (BY MR. SEBY) I'm asking whether you know 8 whether he did or not. I'm asking -- I'm not asking 9 for a question to Mr. Crook.</p> <p>10 A. Sir, I don't know if he did or not; no, 11 sir.</p> <p>12 Q. Okay. Were you ever told that he did?</p> <p>13 A. No, sir, I was not.</p> <p>14 MR. SEBY: Okay. All right. If we could 15 go to Exhibit 420, please.</p> <p>16 Q. (BY MR. SEBY) And, General, this is a 17 cover email with no text, followed by a couple of 18 symbols that are social media symbols. So I want to go 19 right to the attachment, please.</p> <p>20 A. Yes, sir.</p> <p>21 Q. There we are. This is a letter dated 22 September 14th, five days following the September 9th 23 Joint Statement. It's a letter on letterhead of United 24 States Senator John Hoeven, United States Senator Heidi 25 Heitkamp, both from North Dakota; United States</p>
<p style="text-align: right;">Page 79</p> <p>1 property that belongs to the United States Government. 2 But if you go back in history, at one time, all of 3 those lands in that area belonged to the Sioux Nation. 4 And the Sioux people still feel very strongly and are 5 very well attached to that land. And that's what I'm 6 referring to.</p> <p>7 Q. And so how do those concerns, the 8 historical concerns, respectfully relate to events of 9 the day in 2016 that are the subject of this Joint 10 Statement?</p> <p>11 A. I think -- I think the -- the relevance is 12 the federal government wanted to engage further with 13 the -- with the tribal leaders to try and find some 14 common ground. They wanted to -- as this memo states, 15 if there were areas or something in our process for 16 making these types of determinations that needed to be 17 addressed, the federal government wanted to give the 18 tribal leaders the opportunity to identify those 19 concerns and allow us to take them into consideration, 20 respectfully, with all the other factors that go into 21 these type of environmental permit decisions.</p> <p>22 Q. Who wrote this Joint Statement? Do you 23 know?</p> <p>24 MS. ZILIOLI: Objection, calls for 25 speculation.</p>	<p style="text-align: right;">Page 81</p> <p>1 Congressman Kevin Cramer, North Dakota's only 2 Congressman; and the Governor of the State of North 3 Dakota, Jack Dalrymple; dated September 14th.</p> <p>4 The addressees are the Attorney General of 5 the United States, Loretta Lynch; Jo-Ellen Darcy, the 6 Assistant Secretary of the Army for Civil Works; and 7 Ms. Sally Jewell, Secretary of the Department of the 8 Interior. Are you aware of this letter?</p> <p>9 A. Sir, I don't recall. I probably saw it, 10 but I don't recall.</p> <p>11 Q. Are you aware of any response made by any 12 of the addressees, those three individuals; including 13 the individual you told me you worked closely with, met 14 with at least on a daily basis and more, when 15 circumstances merited? Are you aware of whether 16 Ms. Darcy ever acknowledged or responded to this 17 letter?</p> <p>18 A. Sir, I'm not aware if she formally 19 responded or not. I can't recall.</p> <p>20 Q. Have you ever read the letter?</p> <p>21 A. Sir, I don't recall if I've read it or 22 not. I don't remember.</p> <p>23 Q. Was it your practice of being in the Army 24 to receive letters from both Senators of the State and 25 the -- all of the Congresspeople from the State and the</p>

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<p style="text-align: right;">Page 82</p> <p>1 Governor, but not to respond, ever?</p> <p>2 MS. ZILIOLI: Objection, argumentative.</p> <p>3 A. Sir, this letter wasn't addressed to me.</p> <p>4 If it was addressed to me, I would have responded. I</p> <p>5 don't know whether or not Ms. Darcy responded to this</p> <p>6 or not.</p> <p>7 Q. (BY MR. SEBY) Okay. Thank you. You</p> <p>8 don't know that she did, right?</p> <p>9 A. Sir, I'm not aware if she did or not.</p> <p>10 MR. SEBY: Okay. If we could go to</p> <p>11 Exhibit 701, please, 7-0-1.</p> <p>12 (Deposition Exhibit 701, remotely</p> <p>13 introduced and provided electronically to the court</p> <p>14 reporter.)</p> <p>15 Q. (BY MR. SEBY) This is a September 29th,</p> <p>16 2016 email from Chief Semonite, right, to --</p> <p>17 A. Yes, sir.</p> <p>18 Q. -- General Spellmon and you, General</p> <p>19 Jackson, and Colonel John Henderson; again, dated</p> <p>20 September 29, 2016. And it says, "LIEUTENANT GENERAL</p> <p>21 SEMONITE DAPL Assessment." And he is responding to a</p> <p>22 report provided to him from General Spellmon, a DAPL</p> <p>23 assessment. And General Jackson (sic) says -- you want</p> <p>24 to read this email? I want to make sure you are</p> <p>25 recalling this. I know there's not been a lot</p>	<p style="text-align: right;">Page 84</p> <p>1 an open source material, to your knowledge?</p> <p>2 A. Sir, I don't know what he refers to in</p> <p>3 that note. But as I mentioned before, I read the media</p> <p>4 reports and watched the news about what was going on,</p> <p>5 so that -- I would assume that's what he is referring</p> <p>6 to, but I don't know for sure.</p> <p>7 Q. Okay. Last -- last sentence of the first</p> <p>8 paragraph, he says, "My concern" -- that's General</p> <p>9 Semonite, Chief of Engineers -- "is just that most of</p> <p>10 what is needed to do to bring this to successful</p> <p>11 conclusion is OUT OF OUR HANDS" -- in all capital</p> <p>12 letters -- "and I have no confidence that higher levels</p> <p>13 of decision makers will bring this to a timely</p> <p>14 resolution before we have a security issue on the</p> <p>15 ground."</p> <p>16 Do you have any reason to share or</p> <p>17 disagree with the Chief's concern; either? Sir?</p> <p>18 A. I'm -- I'm -- I'm reading and thinking.</p> <p>19 The situation on the ground at that time, as I recall,</p> <p>20 was very complicated. And we -- Colonel Henderson and</p> <p>21 his team on the ground -- working daily with the State</p> <p>22 leadership and also with the tribal leaders, were</p> <p>23 trying to get a good assessment of the situation and</p> <p>24 figure out the best way to keep the escalation from</p> <p>25 occurring or any damage from occurring.</p>
<p style="text-align: right;">Page 83</p> <p>1 recollect from your own emails. I'm wondering if you</p> <p>2 recall this email to you from the Chief?</p> <p>3 A. If you give me a minute to read it, I'll</p> <p>4 be able to respond. So give me just a second.</p> <p>5 Q. I'm inviting -- I'm inviting you to do</p> <p>6 that very thing, please.</p> <p>7 A. Thank you.</p> <p>8 (Deponent examined document.)</p> <p>9 Q. Will you let me know when you're done,</p> <p>10 please?</p> <p>11 A. Yes, sir, I'll let you know.</p> <p>12 (Deponent examined document.)</p> <p>13 Okay. Sir, I've read what's on the</p> <p>14 screen. Is there more?</p> <p>15 Q. All right. We're -- we're going to scroll</p> <p>16 down so you can finish it. There's just a little left.</p> <p>17 A. Okay.</p> <p>18 (Deponent examined document.) Okay.</p> <p>19 Q. So let's go back up to the top of this.</p> <p>20 General Semonite, the Chief of the Corps of Engineers,</p> <p>21 is writing to you thanking General Spellmon for the</p> <p>22 report on -- he calls it "ground truth" on what is</p> <p>23 happening on the ground. And what is -- next sentence,</p> <p>24 he says, "I am getting some open source material . . .</p> <p>25 hard to tell what is spin and what is truth." What is</p>	<p style="text-align: right;">Page 85</p> <p>1 And so I don't -- I haven't read what is</p> <p>2 at the bottom of this, General Spellmon's report, so I</p> <p>3 can't recall exactly what he said. But maybe there was</p> <p>4 something in that report that -- that caused the Chief</p> <p>5 concern. But the real issue is just the complication</p> <p>6 of the situation and him wanting to get a quick answer,</p> <p>7 which was just not -- not available to anyone at that</p> <p>8 time.</p> <p>9 Q. So how come you don't talk about a</p> <p>10 complication being the several thousand people that</p> <p>11 took residence on Corps of Engineers property at the</p> <p>12 Lake Oahe Project and were noted as behaving badly and,</p> <p>13 indeed, violently? So how come that isn't a referenced</p> <p>14 complication?</p> <p>15 MS. ZILIOLI: Objection; misstates</p> <p>16 evidence, assumes facts not in evidence.</p> <p>17 Q. (BY MR. SEBY) Are you -- sir, are you</p> <p>18 aware that at the time of this communication, latter</p> <p>19 part of September, several thousand people were</p> <p>20 resident -- whether several thousand people were</p> <p>21 resident on Corps property?</p> <p>22 A. Sir, at that point in time, I was aware</p> <p>23 that there was a large number, but I don't have -- I</p> <p>24 don't know how many, specifically.</p> <p>25 Q. Were any of them there with approval by</p>

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1 the United States Government?	Page 86	1 through the reports from people that -- that were at 2 the project site.	Page 88
2 MS. ZILIOLI: Objection, legal 3 conclusion.		3 Q. (BY MR. SEBY) As of September 9th, do you 4 know whether or not the Corps representative you 5 mentioned earlier, at -- present at on some occasions, 6 but I don't know when -- was involved in the State of 7 law -- State of North Dakota law enforcement centers, 8 plural, that existed, to be able to share information 9 between State and local law enforcement with the 10 federal government regarding the individuals in the 11 camps on Corps property?	
4 A. Sir, they had not -- they had not had -- 5 they did not have any type of approved -- they had not 6 any approval to be in those -- official approval to be 7 where -- where they were at the time, as I recall.		12 A. Sir, are you referring to the liaison 13 officers that I mentioned earlier?	
8 Q. (BY MR. SEBY) So do you know why the DAPL 9 protesters chose to enter onto Corps land?		14 Q. Well, that's the only one you told me 15 about, yes.	
10 MS. ZILIOLI: Objection, speculation.		16 A. I don't remember -- I don't remember 17 exactly when we put somebody in there full-time. I 18 can't remember if it was in September or October. I 19 just remember that we -- we did that after 20 collaborating with General Dohrmann. When I say "we," 21 I mean Colonel Henderson, working with -- with the 22 State. And it was determined that that would be 23 helpful to his staff, to have someone there that he 24 could turn to to liaise with the Army Corps of 25 Engineers, 24 of 7.	
11 MR. SEBY: No, it's not.			
12 A. Sir, I'm -- I do not -- I do not know why 13 they chose to be where they were.			
14 Q. (BY MR. SEBY) Okay. Am I correct in 15 recalling that you were advised previously that all -- 16 that many protesters on the Corps property were 17 behaving and conducting themselves in a violent manner?			
18 MS. ZILIOLI: Objection; assumes facts, 19 mischaracterizes evidence.			
20 A. Sir, I don't remember specifically hearing 21 anything about violence. I recall the numbers of 22 people and the concern that all parties had -- what I 23 mean "all parties," I'm talking about our Corps folks 24 and the State -- on safety that was associated with all 25 these folks gathering there and how -- how that was			
1 going to be managed or handled and what options were 2 available to our -- our group -- when I say "our 3 group," I define that as the State and the federal 4 government -- to deal with what was -- what was 5 starting to transpire.	Page 87	1 Q. What was the point of doing that?	Page 89
6 Q. (BY MR. SEBY) Are you aware that as of -- 7 whether -- whether as of September 29th protesters 8 resident in these camps on Corps property, as you've 9 said, without any authorization from the federal 10 government of the United States, were using that 11 property to organize and launch hit-and-run missions on 12 private and State lands and buildings and farms, 13 ranches, from those protest camps and returning to 14 there as a safe haven?		2 A. To just increase the communication between 3 the State and the Corps of Engineers.	
15 MS. ZILIOLI: Objection; misstates 16 evidence, testimony, assumes facts.		4 Q. Wasn't it also for the Corps to have some 5 means to know what was happening on its property?	
17 Q. (BY MR. SEBY) Sir?		6 A. No. The -- the purpose of the liaison to 7 the State, if that's the one you're referring to, was 8 to be able to continually report to the State what our 9 information -- what we were -- what we knew and what we 10 were doing on -- on the Lake Oahe Project; so that that 11 information could be disseminated, understood, and 12 considered in decisions that were made by the State.	
18 A. Sir, I'm not -- I'm not -- I've never been 19 shown anything that suggested that they were conducting 20 themselves as you just described.		13 Q. Well, what information did you report to 14 the State on what you were doing at the Oahe Project?	
21 Q. Is that because the Corps never bothered 22 to pay attention to that fact?		15 I have no idea what that is, so please tell me.	
23 MS. ZILIOLI: Objection; argumentative, 24 assumes facts, misstates evidence.		16 A. I don't recall, specifically, what -- what 17 that liaison officer reported on a daily basis.	
25 A. Sir, I'm just relaying what I received		18 Q. No, no. What is it that the -- what is it 19 that the Corps tasked that individual to report to the 20 State law enforcement officials, gathered on a daily 21 basis, monitoring a crisis occurring in the State of 22 North Dakota that was emanating from federal property?	
		23 MS. ZILIOLI: Objection; misstates 24 evidence, assumes facts not in evidence.	
		25 Q. (BY MR. SEBY) Sir?	

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<p style="text-align: right;">Page 90</p> <p>1 A. That -- that individual is there just to 2 be a liaison for Colonel Henderson, so that we could 3 continue to make that State EOC and General Dohrmann 4 aware of what information we had, what we were seeing, 5 what actions we were taking on -- on the federal 6 property that was at Lake Oahe.</p> <p>7 Q. Yeah, but what were those things? I 8 understand what you're telling me the generally stated 9 reason was. But then what did you do to implement 10 that? What did you tell the State officials you, the 11 Corps of Engineers, was doing, affirmatively; or did 12 you just say, "We're doing nothing, and wanted to keep 13 you posted on that"?</p> <p>14 A. No. I don't have specific copies of the 15 reports or any of the communications that occurred 16 inside that EOC. So I don't know, specifically, what 17 was said to the State on a day-to-day basis.</p> <p>18 Q. How about ever?</p> <p>19 A. I'm not sure. You're going to have to be 20 more much specific than that.</p> <p>21 Q. No. I'm asking you. You're telling me 22 that one of the -- the reason the person was there was 23 to do something. What did they do, relative to 24 reporting information that the Corps had? If that was 25 the purpose of putting up that resource there, that</p>	<p style="text-align: right;">Page 92</p> <p>1 can't answer that question.</p> <p>2 Q. Had you participated at all by this time?</p> <p>3 A. Sir, I don't recall exactly what date it 4 started, so I couldn't tell you if, by this time, I was 5 participating or not.</p> <p>6 Q. Well, as of September 29th, there weren't 7 many days left in the month of September. You told me 8 it started in September. So, yes or no, you had 9 already participated or not yet participated in the 10 National Security Council dialogue that you told me 11 about?</p> <p>12 MS. ZILIOLI: Objection, misstates 13 testimony and argumentative.</p> <p>14 MR. SEBY: It's neither.</p> <p>15 A. So what I --</p> <p>16 Q. (BY MR. SEBY) Sir -- sir, do you want to 17 change your testimony or -- or speak to my question?</p> <p>18 A. If you'll let me, I will speak to your 19 question. Are you done?</p> <p>20 Q. Please. Go ahead.</p> <p>21 A. So what I recall -- are you done?</p> <p>22 Q. I'm waiting for you, sir.</p> <p>23 A. I was trying to, but you interrupted me 24 again. What I told you before in my testimony was that 25 sometime in that time frame between September and</p>
<p style="text-align: right;">Page 91</p> <p>1 singular resource there, what did that person -- what 2 was that person told to advise the State of?</p> <p>3 A. To keep him in communication with any 4 information that Colonel Henderson had that he thought 5 was -- was helpful to the actions that they were 6 ongoing and that State EOC.</p> <p>7 Q. Wasn't that individual just there to take 8 notes about what the State was doing, but had nothing 9 to say as a position of the federal government?</p> <p>10 MS. ZILIOLI: Objection; misstates 11 evidence, assumes facts.</p> <p>12 A. Sir, I have no knowledge of what that 13 individual did on a day-to-day basis. I just know what 14 we put him in there for.</p> <p>15 Q. (BY MR. SEBY) Got it. At this time, the 16 end of September, you told me earlier that you had, by 17 this time, spent a month of weekly meetings, at least, 18 maybe more frequent, participating as the 19 representative of the United States Army in the 20 National Security Council telephone conferences, 21 correct?</p> <p>22 A. Sir, if I remember right, I told you it 23 started sometime in this time frame. I don't know that 24 I'd been -- it had been ongoing for 30 days. I don't 25 remember how many days or exactly when it started, so I</p>	<p style="text-align: right;">Page 93</p> <p>1 November is when I recall beginning those meetings with 2 NSC. I don't remember specifically what day -- I don't 3 remember if it started specifically in September or 4 October. I have no recollection of the exact day.</p> <p>5 Q. Okay. As of this time, though, you were 6 aware that there were people present on Corps property 7 without authorization to be there, is what I understood 8 you to have said. Is that still correct, or do you 9 want to modify that?</p> <p>10 MS. ZILIOLI: Objection, legal 11 conclusion.</p> <p>12 A. No, sir. It's -- it's obvious that I knew 13 that there were people on Corps property at this time.</p> <p>14 Q. (BY MR. SEBY) Yeah. Okay. When did the 15 Corps decide to let the protesters on its property 16 continue to remain there?</p> <p>17 MS. ZILIOLI: Objection, assumes facts.</p> <p>18 A. I'm not sure I understand your question.</p> <p>19 Q. (BY MR. SEBY) Do you recall the time 20 frame when the Corps of Engineers affirmatively decided 21 to allow the protesters to remain on its lands within 22 the Oahe Project in the state of North Dakota?</p> <p>23 MS. ZILIOLI: Same objection.</p> <p>24 A. I do not, no.</p> <p>25 Q. (BY MR. SEBY) How long were the</p>

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<p style="text-align: right;">Page 94</p> <p>1 protesters on the Corps of Engineers property in the 2 state of North Dakota on the Lake Oahe Project?</p> <p>3 A. Sir, my understanding was that the first 4 protesters arrived in the July time frame; at least 5 that's when I was first made aware of it.</p> <p>6 Q. Through what time frame were they last 7 there on the property of the Corps of Engineers?</p> <p>8 A. As I understood it, it was probably 9 sometime in January of 2017.</p> <p>10 Q. Are you sure about that?</p> <p>11 A. Not a hundred percent. I said generally. 12 I think they could have been there a bit longer. I 13 just know that that's about the time we started the 14 cleanup activities; which took place, I think, in 15 January and February of 2017, as I recall. I don't 16 know the specifics. I don't remember the specifics.</p> <p>17 Q. Am I correct in understanding from your 18 own communications that you were involved in the 19 cleanup activities, such as the Corps was, through 20 April of 2017?</p> <p>21 A. Sir, I wasn't directly involved in the 22 cleanup. I was aware of the cleanup activities and 23 monitored the cleanup and the restoration of the lands 24 there. And I don't remember exactly how long that took 25 to complete, but it would have been sometime</p>	<p style="text-align: right;">Page 96</p> <p>1 But at least as of September 29th, you don't recall 2 whether or not you'd even yet participated in one, 3 correct?</p> <p>4 A. Sir, I think when I first mentioned those 5 calls, that I gave you a general time frame. I don't 6 recall exactly when they started. I just remember 7 attending them. And I know that they started somewhere 8 in that time frame, but not specifically.</p> <p>9 Q. You recall now that your -- so your -- I 10 just want to understand what you're really saying. Are 11 you really saying now, after all this discussion, that 12 those calls sometime -- started sometime in the 13 September to November time frame, but you don't know 14 when and how many occurred?</p> <p>15 A. Sir, that's what I told you from the very 16 beginning. So that part of my testimony hasn't changed 17 at all.</p> <p>18 Q. All right.</p> <p>19 A. You asked me specifically if they had 20 started on a certain date. But since I told you that I 21 don't know specifically when they started --</p> <p>22 MR. SEBY: General Jackson, your audio is 23 not what it was prior to the break.</p> <p>24 THE DEPONENT: Okay. I'm sorry. Can you 25 hear me now?</p>
<p style="text-align: right;">Page 95</p> <p>1 thereabouts.</p> <p>2 Q. What is "thereabouts"? What are you 3 referencing, what date?</p> <p>4 A. You said October -- you said April of 5 2017. That would seem reasonable, given that I believe 6 the cleanup started sometime late January, early 7 February, and took probably a month or so to complete.</p> <p>8 Q. Right.</p> <p>9 MR. SEBY: Okay. How about we take 10 another ten-minute break and come back at the top of 11 the hour?</p> <p>12 THE DEPONENT: Okay, sir.</p> <p>13 MR. SEBY: Thank you.</p> <p>14 THE DEPONENT: Thank you.</p> <p>15 THE VIDEOGRAPHER: Going off the record. 16 The time is 4:51 p.m. UTC, 10:51 a.m. Mountain. 17 (Recess, 10:51 a.m. to 11:00 a.m. MDT.) 18 THE VIDEOGRAPHER: We are back on the 19 record. The time is 5 o'clock p.m. UTC, 20 11 o'clock a.m. Mountain.</p> <p>21 Q. (BY MR. SEBY) General Jackson, we're back 22 from a short break. And I want to go back to your NSC, 23 National Security Council, calls that you participated 24 in. And your -- your testimony has evolved to clarify 25 that you thought they started sometime in September.</p>	<p style="text-align: right;">Page 97</p> <p>1 THE REPORTER: Yes.</p> <p>2 MR. SEBY: Yeah, much better. Thank you.</p> <p>3 THE DEPONENT: Okay. I'm sorry. Let me 4 answer your question. I -- I apologize for that.</p> <p>5 A. No. What -- since I gave you a general 6 time frame at the very beginning of my testimony about 7 when those NSC calls occurred, I haven't changed any of 8 my testimony to that end. You asked me specifically in 9 the last round of questions about a very specific date. 10 And since I told you I don't know what specific dates 11 they started on, I can't confirm or deny that -- that I 12 had one before that date or not. So I'm trying to be 13 truthful and specific, as much as my memory will allow.</p> <p>14 Q. (BY MR. SEBY) Is your testimony still the 15 same with respect to the frequency of those calls that 16 you told me about?</p> <p>17 A. Sir, I told you in my testimony that they 18 were routine. I didn't recall if they were weekly or 19 every other week or -- I don't recall the exact 20 frequency of when they occurred. I knew that they were 21 routine for a period of time; meaning, they happened 22 more than one time over a period of time. But I don't 23 recall, specific, how often they did.</p> <p>24 Q. Is it still your testimony that you recall 25 that the Governor of North Dakota participated and</p>

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<p style="text-align: right;">Page 98</p> <p>1 spoke on at least one of those calls?</p> <p>2 A. I do recall the Governor -- if my memory 3 serves me correct, I do recall the Governor speaking on 4 one. And I do recall that General Dohrmann was on a 5 call routinely, as I -- as I remember.</p> <p>6 Q. So your recollection about the Governor 7 being on the call and you hearing him, what do you 8 recall the Governor said?</p> <p>9 A. I don't recall the specifics of what he 10 said. I know he was updating, as we all were, his -- 11 his view of what was going on on the ground. And 12 that's all that I remember.</p> <p>13 Q. And what was his view of what was going on 14 on the ground?</p> <p>15 A. Sir, I don't remember the specifics, but I 16 know it pertained to the -- the growing numbers of 17 people and his concerns on -- on what the State was 18 going to -- how the State was going to manage that and 19 wanted to continue to cooperate with the federal 20 government in trying to come to a joint solution that 21 would be helpful.</p> <p>22 Q. So what did the federal government do to 23 cooperate with the Governor of the State of North 24 Dakota with regard to the growing number of people on 25 the ground? And I'm using your words to ask you that</p>	<p style="text-align: right;">Page 100</p> <p>1 again, with the Standing Rock Sioux Tribe and other 2 tribal leaders. The commanding general -- and then, 3 also, with the leadership of North Dakota. The 4 Commanding General, General Spellmon, made several 5 visits to North Dakota to engage with the leadership 6 there, as you indicated in one of the previous exhibits 7 that you shared. And I know that Ms. Darcy, Assistant 8 Secretary, when the listening sessions began, 9 participated in several of those personally --</p> <p>10 Q. What listening discussions?</p> <p>11 A. -- to demonstrate her commitment. The 12 listening sessions that were indicated in that 13 9 September memo that you shared with me.</p> <p>14 Q. Are those listening sessions regarding the 15 DAPL protest or something different?</p> <p>16 A. They were listening sessions to talk with 17 various tribal nations, to include the Sioux Nation, on 18 the environmental permitting process that the federal 19 government used, in general.</p> <p>20 Q. It's my impression from reading a lot of 21 your correspondence and your colleagues' correspondence 22 that there was at least a venire attempt to try and 23 distinguish those listening sessions from what was 24 going on with respect to the pending easement 25 consideration at the Dakota Access Pipeline. Are you</p>
<p style="text-align: right;">Page 99</p> <p>1 question.</p> <p>2 A. I don't know what other agencies did, sir. 3 I can only tell you what the Army Corps of Engineers 4 did.</p> <p>5 Q. Please.</p> <p>6 A. The Army Corps of Engineers, on the 7 ground, just continued to collaborate with the State of 8 North Dakota. They continued to -- we continued to 9 collaborate with the tribal leaders to try to find a 10 peaceful resolution to the growing number of people who 11 were at that site at the time.</p> <p>12 Q. At that site includes the Corps of 13 Engineers' own property, doesn't it?</p> <p>14 A. It does; yes, sir.</p> <p>15 Q. What did you do -- what contributions do 16 you recall you directing or being directed to deploy, 17 on behalf of the Army Corps of Engineers, to contribute 18 (sic) to the problem that we are talking about today?</p> <p>19 A. Can you -- can you rephrase that? I don't 20 understand what you mean "contribute to the problem."</p> <p>21 Q. No, I didn't say that. I said, what did 22 you do to contribute to addressing the problem that 23 we're discussing today?</p> <p>24 A. We -- John Henderson and the staff at Lake 25 Oahe were there and engaging regularly with the --</p>	<p style="text-align: right;">Page 101</p> <p>1 telling me that one was part of the other?</p> <p>2 A. I'm not sure I understand what you mean by 3 "venire."</p> <p>4 Q. The Corps and the Government took the 5 position, in my opinion, and I'm asking you if you 6 agree with me, that those were two separate 7 circumstances. There was the DAPL protest issue 8 regarding and concerning the Corps' ongoing -- and the 9 Secretary -- Assistant Secretary's ongoing 10 consideration of the easement. And then there 11 separately was the listening sessions regarding the 12 federal government's procedure nationally, at large, 13 with regard to Native American tribes. Are you telling 14 me the first is part of the second?</p> <p>15 A. I think -- I think one is related to the 16 other. And this is how they're related. One is, there 17 was still a decision that had yet to be made on the 18 granting of the easement for the Dakota Access 19 Pipeline. That was the root cause of the protests to 20 begin with. The purpose of the listening sessions was 21 to have that engagement with -- with the Native 22 American population to get their input to make sure 23 that the process that we use to make those 24 determinations included their views and their input.</p> <p>25 And so Secretary Darcy -- and as I</p>

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<p style="text-align: right;">Page 102</p> <p>1 understand, the Secretary of the Interior and the DOJ, 2 as laid out and directed by that 9 September memo -- 3 the spirit and intent of that was to collect that 4 information and put that into our decision-making 5 process before a final determination was going to be 6 made on the environmental permit and the easement 7 that -- that was affecting the Dakota Access Pipeline. 8 So they weren't very -- they were related.</p> <p>9 And -- and we had to do those listening 10 sessions, as I recall, before a permit decision would 11 be made by the Secretary. That was her intent, as I 12 understand it and as I recall. So they are -- they are 13 related in that regard.</p> <p>14 Q. So the pending DAPL issue was dependent 15 upon the outcome of the listening sessions and whatever 16 happened as a result, is what I understand you to be 17 saying; is that correct?</p> <p>18 A. Sir, what I'm saying is the -- the 19 listening sessions would provide input that was going 20 to be considered to determine if the process that we 21 had used to make the recommendations to Ms. Darcy, who 22 is the final decision-maker on the easement, were 23 sufficient enough to give her a level of comfort that 24 the decision that she made was -- was the right 25 decision. And so that's why -- I believe that's what I</p>	<p style="text-align: right;">Page 104</p> <p>1 September, which was signed by the DOJ, the DOI, and -- 2 you didn't show me who it was signed by, but I know it 3 was signed by Ms. Darcy --</p> <p>4 Q. It's not signed.</p> <p>5 A. -- because the subsequent memo --</p> <p>6 Q. It's not signed.</p> <p>7 A. But the -- that letter that you're talking 8 about directed the -- I lost my train of thought now. 9 I apologize. That letter directed us to do the 10 listening sessions. So those had to be done before a 11 permit decision or an easement decision could be made. 12 And I believe that was in that language that you showed 13 me, unless I'm mistaken.</p> <p>14 MR. SEBY: Okay. If we could go to 15 Exhibit, please, 705.</p> <p>16 (Deposition Exhibit 705, remotely 17 introduced and provided electronically to the court 18 reporter.)</p> <p>19 Q. (BY MR. SEBY) If you would please, 20 General Jackson, review this chain of emails. It's a 21 two-part email. The first part is the part that's most 22 of this exhibit. And it's an email from you to the 23 Chief of Engineers, dated October 18, now, 2016. And 24 it says the subject is "Dakota Access Pipeline Updated 25 Talking Points (VCSA) Office Call." What does that</p>
<p style="text-align: right;">Page 103</p> <p>1 said anyway, so . . .</p> <p>2 Q. Okay. So you participated on behalf of 3 the Corps and the Department of the Army in those 4 listening sessions. Maybe others joined you, but you 5 participated in those, didn't you?</p> <p>6 A. I did not, no. Ms. Darcy participated in 7 them, and John Henderson participated in many of those 8 that were at the Sioux Tribe locations that he worked 9 with on a regular basis. I don't recall who from the 10 Corps of Engineers attended the other ones. It was 11 dependent on which region of the country they were 12 located in, and there were several.</p> <p>13 Q. Yeah. So was it Ms. Darcy's decision 14 to -- for the pending DAPL easement evaluation and 15 consideration to be part of the process in the 16 conclusion of the listening sessions?</p> <p>17 A. That was an outcome, because that was 18 additional information that she wanted to get before 19 she felt like she had sufficient information on hand to 20 make the decision that she held at her authority.</p> <p>21 Q. I asked the question, was it her decision 22 for one to be part of the other? And so what is your 23 answer to the question?</p> <p>24 A. Well, the answer to the question is, the 25 three-party letter that you showed me on the 9th of</p>	<p style="text-align: right;">Page 105</p> <p>1 mean, VCSA?</p> <p>2 A. So that's the Vice Chief of Staff of the 3 Army. It looks like it was John Allyn at the time.</p> <p>4 Q. Okay. And he is the Vice Chief to the 5 Chief, and that would be General Milley, correct?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Who is a member of the Joint Chiefs of 8 Staff of the United States, correct?</p> <p>9 A. Yes, sir. As the Chief of Staff of the 10 Army, he's one of the -- one of the members of the 11 Joint Chiefs of Staff. General Milley, that had been.</p> <p>12 Q. Yeah. So you're developing talking points 13 for a VCSA office call. What does that mean?</p> <p>14 A. Normally what that means is the Vice Chief 15 of Staff of the Army has asked General Semonite to come 16 give him an update on what's going on on something. 17 And so what we -- the terminology for talking points 18 are just, you know, bullets that will help a senior 19 leader be able to brief another senior leader in simple 20 language that's easy to follow and understand.</p> <p>21 Q. And so were you --</p> <p>22 A. That's what -- that's what a talking point 23 is.</p> <p>24 Q. Yeah. Were you writing these for General 25 Semonite's use with Vice Chief of Staff of the United</p>

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<p style="text-align: right;">Page 106</p> <p>1 States Army, General Allyn?</p> <p>2 A. It appears that I was, based on this 3 email; yes, sir.</p> <p>4 Q. Okay. And when you -- did you do this for 5 the first time here, or was this something that was 6 part of your normal duties on DAPL or any other topic 7 General Semonite was asking you to do it, so he could 8 make representations and brief the Vice Chief of Staff 9 of the United States Army?</p> <p>10 A. Sir, it's -- it's routine for -- our 11 senior leaders have many, many responsibilities. And 12 so when there's a need for one of our senior leaders to 13 be made aware of something, or if they have a specific 14 question on something, then we prepare -- "we" meaning 15 the staff, which is what I was -- prepare some 16 information that would allow us to, number one, get our 17 boss up to speed with what he needed to know about the 18 situation, so that he can furthermore articulate that 19 to his boss in a way that the boss could understand it 20 strategically, but -- but have enough of a detail so 21 that he would have an understanding of whatever it was, 22 the topic. So this was a standard -- this is a 23 standard thing in the military.</p> <p>24 Q. Was it standard for you to do it, is what 25 my question was a couple minutes ago?</p>	<p style="text-align: right;">Page 108</p> <p>1 invited them to elaborate if you missed anything, 2 right?</p> <p>3 A. I can't read. Can you down -- can you 4 scroll -- can you drop the blow-up so I can read the -- 5 I'd like to read the document, if you don't mind.</p> <p>6 Q. Yeah. Let's go to -- let's go to -- yeah. 7 Before you do that, I want to ask you another question, 8 though. It's not related to the document itself, but 9 to the practice and what you just said about you would, 10 when asked, develop draft talking points for your boss. 11 And I believe that you said that the -- the preparation 12 of the information was to get your boss, the Chief of 13 Engineers, General Semonite, up to speed so that he 14 could articulate and accurately brief his boss, the 15 Vice Chief of Staff of the United States Army. Do I 16 have that right?</p> <p>17 A. I believe; yes, sir.</p> <p>18 Q. And that's so he could understand the 19 detail and the nature of the topic being presented, 20 correct?</p> <p>21 A. Yes, sir.</p> <p>22 Q. So do you think that in your doing that, 23 it was incumbent on you to be, a, truthful; b, 24 accurate; and, c, complete?</p> <p>25 A. Sir, it was incumbent on me to be always</p>
<p style="text-align: right;">Page 107</p> <p>1 A. If he asked me to, I did; yes, sir.</p> <p>2 Q. And did that happen, is the question?</p> <p>3 A. Did that happen -- did he ask for specific 4 talking points for this meeting? I don't recall if he 5 asked me for them, but he may have; or I would have 6 just volunteered them, if I knew he had an office call 7 with the Vice. But it was standard practice that 8 either General Semonite or one of his front office 9 staff would ask for some talking points on a topic that 10 that the Chief needed to know about, and that's what we 11 would do. So I would do that; yes, sir.</p> <p>12 Q. Okay. So if we just -- I want you to read 13 your response to the Chief, because it says right there 14 in the first sentence, "You asked" -- you, Chief -- 15 "asked for some updated talking points in advance of 16 your scheduled meeting with the Vice Chief of Staff of 17 the Army this week. I" -- you, meaning you, General 18 Jackson -- "tried to format this in . . . a way to make 19 it easier to walk General Allyn through the details in 20 a logical manner."</p> <p>21 And then you copied David Cooper and 22 General Spellmon. Who is David Cooper?</p> <p>23 A. David Cooper is the Chief Counsel for the 24 Army Corps of Engineers.</p> <p>25 Q. Okay. So you copied these gentlemen and</p>	<p style="text-align: right;">Page 109</p> <p>1 truthful, which I always am. It was incumbent upon me 2 to be accurate, based on the facts as I knew them at 3 the time. And it was incumbent on me to be complete as 4 it pertains to the amount of information that I had 5 available to know at the time that I drafted up the 6 talking points.</p> <p>7 Q. Okay. So as of October 18th, 2016, given 8 everything that's happened since the time that people 9 showed up and increasingly gathered on Corps property 10 and were violent, in the Corps' own estimation, and 11 trespassing on Corps property, causing a lot of 12 problems, that the State of North Dakota had to get an 13 emergency declaration to release funds for law 14 enforcement to address, as best they could. Why would 15 you not include in talking points to your boss, for his 16 boss to have, a complete -- accurate and complete, and 17 truthful by the way, report -- why wouldn't you include 18 any reference to the thousands of people present on 19 Corps property behaving poorly, as of this time, in the 20 protest that had now about been going on for several 21 months?</p> <p>22 MS. ZILIOLI: Objection; assumes facts, 23 misstates evidence.</p> <p>24 Q. (BY MR. SEBY) Would you please now read 25 your email and tell me where you bothered to include</p>

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<p style="text-align: right;">Page 110</p> <p>1 any reference to the protesters, sir?</p> <p>2 MS. ZILIOLI: Same objections and 3 argumentative.</p> <p>4 MR. SEBY: I'm just asking him to read the 5 email.</p> <p>6 A. I -- I understand what you said. Give me 7 a chance to read it.</p> <p>8 MS. ZILIOLI: Counsel, you're not 9 letting -- you asked a question, and then you 10 interrupted, yourself, before he had a chance to 11 answer. So please let him answer.</p> <p>12 MR. SEBY: I asked him if he'd please read 13 his email, Counsel.</p> <p>14 MS. ZILIOLI: The question before that was 15 a question. I objected, and you didn't let him answer. 16 You moved on.</p> <p>17 MR. SEBY: I don't have to answer your 18 objections, ma'am.</p> <p>19 MS. ZILIOLI: You don't. I'm just putting 20 it on the record.</p> <p>21 A. (Deponent examined document.)</p> <p>22 Sir, can you -- can you scroll down to the 23 beginning of where it says "Litigation"? Thank you. 24 That's good.</p> <p>25 (Deponent examined document.)</p>	<p style="text-align: right;">Page 112</p> <p>1 some of the dialogue that he's had with the -- with the 2 leadership of the Standing Rock Sioux and other members 3 of federally recognized tribal nations who are 4 participating in this to find a peaceful way to address 5 their concerns; which we talk about in here with the 6 listening sessions.</p> <p>7 And also, it was determined -- and this 8 was done in full coordination with the State, as I 9 understand it, between John and his collaboration with 10 the State -- is the best option -- and it's a very, 11 very complicated option -- was for the leadership of 12 the tribal nations to make the decision to do a 13 peaceful departure from the location. And that's what 14 we were attempting to do.</p> <p>15 So these are the facts that I was putting 16 down. And this particular note, it covers mostly 17 technical information, technical background on Corps 18 authorities, and then, you know, some of the very 19 specific information that -- that was necessary for 20 General Semonite to articulate to General Allyn to let 21 him know what actions we were taking to try and get to 22 a peaceful resolution with the situation on the ground.</p> <p>23 Q. Thank you. So, General Jackson, can 24 you -- since this is your email, would you explain what 25 you mean by, "Colonel Henderson continues to work with</p>
<p style="text-align: right;">Page 111</p> <p>1 Sir, does this -- does this email contain 2 the request for information that was -- that prompted 3 me to make this response to General Semonite, if you 4 scroll all the way down, or does it not have that 5 aspect of it?</p> <p>6 Q. (BY MR. SEBY) You'd have to direct that 7 question to your counsel, because this is what they 8 gave us.</p> <p>9 A. Okay. No worries. No worries. So back 10 to your question of why I would not mention those 11 things. First of all, I don't know what -- 12 specifically what information General Semonite asked 13 for me to provide. A lot of this email looks to be 14 technical background information that helped the Vice 15 Chief of Staff of the Army understand why the Corps was 16 involved in something of this type at all.</p> <p>17 It's not uncommon for senior leaders in 18 the uniformed services to not understand the very 19 unique nature of the Army's Civil Works mission, which 20 is very much off the mainstream for what would be on 21 the minds of the -- the Army senior leadership; 22 specifically the uniformed members who are focused on 23 their Defend the Nation mission, specifically.</p> <p>24 In this particular email, I talk about the 25 actions that John Henderson is taking. I allude to</p>	<p style="text-align: right;">Page 113</p> <p>1 the leadership of the Standing Rock Sioux Tribe to 2 execute a peaceful, tribal led, move onto Federal lands 3 (under provisions of a heavily caveated Special Use 4 Permit) and/or back to the reservation which is in 5 close proximity"? What -- what is that all about?</p> <p>6 A. So what Colonel Henderson was doing was he 7 recognized that the leaders -- the whole spiritual 8 leadership of this protest was all surrounding the 9 Standing Rock Sioux Tribe and the leadership there. 10 And Chairman Archambault was certainly seen, as we 11 understood it at the time, as the leader of this 12 protest. And so we worked with him and had been 13 working with him. And I say "we." I really mean John 14 Henderson had worked very closely with Archambault and 15 also with the leadership of the State of North Dakota, 16 as I understand it, to try to figure out what the best 17 way was for all of this to deescalate.</p> <p>18 Because what was happening at the time -- 19 which was very, very complex -- was, what started out 20 as a -- as a peaceful protest of Native American tribal 21 personnel, became more complicated when others from 22 outside of the tribal nations arrived to join the 23 protest. And so what John was attempting to do with 24 this, and working with the State and working with the 25 tribal leaders, was to separate the tribal -- the</p>

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<p style="text-align: right;">Page 114</p> <p>1 peaceful tribal-led protests from those who were not. 2 And so that's what he was attempting to do with this. 3 And so we were looking at a number of 4 different things that we could do. We did this in full 5 collaboration with the State of North Dakota to try to 6 find a way to deescalate the situation in a way that 7 was in the best interest of all parties. And so that's 8 what this refers to.</p> <p>9 Q. Yeah. And so the Corps was investing in 10 Colonel Henderson trying to get the -- the Standing 11 Rock to be a point of leadership, using your word, to 12 execute a plan, right?</p> <p>13 A. We were trying to develop a plan, I 14 believe, at this time. I don't know that there had 15 been a plan established; but I don't remember exactly, 16 based on the timing of this.</p> <p>17 Q. And the date of your email reporting this 18 plan is October 18, 2016, right?</p> <p>19 A. That's what it says on this document; yes, 20 sir.</p> <p>21 Q. Why would you think it was appropriate 22 and/or prudent to invest in the leadership of the 23 Standing Rock Sioux Tribe to deal with a problem on 24 your property?</p> <p>25 A. In the Corps of Engineers, we value</p>	<p style="text-align: right;">Page 116</p> <p>1 as a result of his leadership role, he persevered 2 through all that and helped to develop, ultimately, 3 a -- a way out of the situation by executing the plan 4 that I recall all parties saying was the best option 5 available, given this very complicated situation that 6 everybody was a part of at that time.</p> <p>7 Q. I just asked the question of whether you 8 want to -- you want to stand on your use of the term 9 "partnership" with the Standing Rock Sioux Tribe as the 10 reason for October 18th, investing in a strategy of 11 having them take leadership to execute a peaceful 12 tribal-led move onto federal lands under a different 13 new special use permit with lots of caveats on it. And 14 what does that mean, lots of caveats, heavily caveated?</p> <p>15 A. That means there were a lot of very unique 16 aspects of this situation that we were trying to 17 address as part of the special use permit. So we 18 worked very carefully with our legal teams -- John did, 19 John Henderson did -- to try and craft something that 20 was executable that would allow the Standing Rock Sioux 21 to execute their First Amendment rights in a peaceful 22 manner and -- but they had to comply with certain 23 provisions that -- that were required of these type of 24 permits. And that's what I believe you're referring 25 to.</p>
<p style="text-align: right;">Page 115</p> <p>1 greatly our partnership and engagement with our Native 2 American partners. We treat them as the federal 3 government does, as -- as their only federal entity. 4 So, in essence, they are a nation under themselves. So 5 it was in everyone's best interest -- and this was 6 discussed multiple times with the State -- on how best 7 to deescalate the situation; and that was, to work with 8 the leaders of the tribes and figure out a way to come 9 to terms with them so that this would be ended in a 10 peaceful way. And that's -- that's what we did.</p> <p>11 Q. Okay. And so you said -- used the word 12 "partnership," right?</p> <p>13 A. We worked together or tried to develop -- 14 it was -- as I recall, Colonel Henderson worked very 15 hard during this time in a very, very difficult 16 situation to maintain good communication with the 17 tribal leaders; because he and all parties agreed -- 18 and this was federal and State, as I remember -- agreed 19 that, you know, the tribal leaders were the keys to 20 ending the protest and -- and getting things back to 21 normal. So there was great effort put in by John 22 Henderson to lead that.</p> <p>23 He had a great relationship with the 24 leadership of the Standing Rock Sioux Tribe and with 25 others. Even though he was under great personal duress</p>	<p style="text-align: right;">Page 117</p> <p>1 Q. I'm asking you what you're referring to, 2 sir. And so what -- now that we're -- you've -- you've 3 said it in response to the question, what are the 4 certain provisions required of a special use permit 5 that you're referring to? I'm asking you, what do you 6 mean by calling it a heavy -- heavily caveated special 7 use permit? What would those terms and conditions 8 involve?</p> <p>9 A. Sir, I don't recall exactly what those 10 terms and conditions were. It's a legal document 11 that -- that I refer to our counsel to best answer for 12 you.</p> <p>13 Q. I'm -- I'm not asking you what your 14 counsel thinks or says. I'm asking you what you meant 15 when you wrote the email that uses the phrase "under 16 provisions of a heavily caveated special use permit"? 17 What are you talking about?</p> <p>18 A. It's what I just told you. It was a -- a 19 permit that had -- it was a permit that took into 20 consideration the very unique circumstances that were 21 being faced at the time the permit was requested and 22 being considered.</p> <p>23 Q. You know what I don't understand, General, 24 is that as of October 18th, 2016, a month had gone by 25 when you, the Corps, offered an unsigned special use</p>

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<p style="text-align: right;">Page 118</p> <p>1 permit, requested a month before that, two -- two 2 months prior to this email, asking for a special use 3 permit. The request was made by the Chairman of the 4 Standing Rock Sioux Tribe. They failed to meet the 5 conditions -- the terms and conditions, the caveats, if 6 you will, of that permit. Why did you think it was 7 reasonable or prudent to go to bat and try the same 8 thing that didn't work out the first time?</p> <p>9 MS. ZILIOLOI: Objection, assumes facts.</p> <p>10 A. Well, we were trying to find the best 11 possible way to end this situation. And there were -- 12 there were no good options. And so we had to rely on 13 the relationships that we had established, and we had 14 to work closely with the State to try to develop a good 15 plan that would be in the best interest of all parties. 16 And that's -- that's what we were trying to do. So we 17 continued to work this, even though it was very, very 18 difficult, because we saw that as the best way to -- to 19 resolve the situation.</p> <p>20 Q. (BY MR. SEBY) So you used the word 21 earlier, "partnership" with the Standing Rock Sioux 22 Tribe and that's why you thought to -- to do this. Do 23 you really think that word fits, under the 24 circumstances at the time, October 18, 2016? The 25 Standing Rock Sioux Tribe had repeatedly been suing the</p>	<p style="text-align: right;">Page 120</p> <p>1 personal effort with the leadership of the Standing 2 Rock Sioux Tribe and others, other legitimate leaders, 3 and with the -- the State of North Dakota.</p> <p>4 So we -- he did this in -- when I say 5 "partnership," he did it in partnership, in full 6 collaboration with the resources that he had available 7 to the best of his ability. And I thought he did a 8 magnificent job overall, for the record.</p> <p>9 Q. (BY MR. SEBY) So -- so you said the 10 reason you invested -- the Corps invested in this 11 partnership, as of October 18th, as the basis for the 12 plan that the Corps was pursuing. All the while, 13 thousands of protesters without any authorization to be 14 on Corps property, including elements of the Standing 15 Rock Sioux Tribe and the Corps calling it the Standing 16 Rock Sioux Tribe protest, notwithstanding all of that, 17 you decided to roll the dice and give it a try, right?</p> <p>18 MS. ZILIOLOI: Objection; assumes facts, 19 misstates evidence, legal conclusion.</p> <p>20 A. No. Rolling the dice is your term, sir.</p> <p>21 Q. (BY MR. SEBY) It is. It is.</p> <p>22 A. What I said was -- no. Let me finish, 23 please. Don't interrupt. What I would -- what I would 24 respond to that is that rolling the dice is your -- 25 what you said. That's not what I said.</p>
<p style="text-align: right;">Page 119</p> <p>1 Corps and was also party to violence. Members of the 2 Tribe, not all of them, some of them were being 3 violent, and they were also trespassers on your 4 property. You viewed that as -- as qualifying to be a 5 partner?</p> <p>6 MS. ZILIOLOI: Objection; assumes facts, 7 misstates evidence, legal conclusion.</p> <p>8 A. Yes, sir. I mean, you know, when you -- 9 when you are in the business of environmental 10 permitting in the Army Corps of Engineers, there's 11 always two sides to -- to every issue. And we have, in 12 the Army Corps of Engineers, only are able to do our 13 mission through partnering with those that we do 14 business with and that we do business for. So it's not 15 uncommon for a partner to not agree with our position 16 on an issue in this environmental space or in other 17 spaces. But that doesn't necessarily mean that we 18 don't retain our partnership.</p> <p>19 Without -- and maybe "partnership" is the 20 wrong word. I don't know how you're going to use it. 21 But for me, partnering is about building relationships 22 of trust and confidence and trying to work together to 23 resolve issues. And that's what we were trying to do. 24 And that's what John Henderson, I thought, did very 25 effectively. And he did this, again, through a lot of</p>	<p style="text-align: right;">Page 121</p> <p>1 What I said was leveraging a partnership 2 that has existed for many years and will exist for many 3 years to come, in order to try and find the most 4 reasonable solution to resolving the problem. And 5 that's what -- that's what we did. It was not a 6 rolling of the dice. It was relying on a long-standing 7 relationship that was the only way out of a very, very 8 complicated situation, in our assessment, at the time. 9 And that's the reason that we went that route.</p> <p>10 Q. And -- and to do that, to go that route, 11 you assumed that the Standing Rock Sioux Tribe had the 12 capacity to be that partner, right?</p> <p>13 A. Sir, at the time, there weren't a lot of 14 options. And so the best option was, legitimately, to 15 get to a point that the Standing Rock Sioux realized 16 that the extent of their protests had achieved what 17 they wanted to achieve. And that's what we were 18 attempting to address with the listening sessions that 19 took place.</p> <p>20 And then once they were able to get that 21 point across, they would peacefully leave and bring no 22 more risk to their people in being a part of this -- 23 this activity. And so we were trying to recognize the 24 legitimacy of the Standing Rock Sioux and what they 25 were attempting to do, exercising their First Amendment</p>

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<p style="text-align: right;">Page 122</p> <p>1 rights in good faith, and work through that leadership; 2 because we saw that, again, as the best way to resolve 3 what was a very, very complicated situation.</p> <p>4 Q. So do you think that as of October 18, 5 2016, they had the capacity to do what you wanted them 6 to do?</p> <p>7 A. Yes, sir, I think they did.</p> <p>8 Q. Why do you say that?</p> <p>9 A. That's my assessment.</p> <p>10 Q. And you put a lot of faith in Colonel 11 Henderson, didn't you?</p> <p>12 A. I absolutely did.</p> <p>13 MR. SEBY: Okay. Let's go to Exhibit 3 -- 14 oh, pardon me -- yeah, 318, if you would, Ms. Hymel.</p> <p>15 Q. (BY MR. SEBY) Okay. I'd like you to read 16 this entire email, which is a -- is actually -- it's a 17 bunch of addressees at the bottom, but the -- the text 18 is short; because I want you to be a hundred percent 19 clear on what -- what this is, so we can talk about it.</p> <p>20 A. Okay.</p> <p>21 Q. If you'd start at the bottom there. So it 22 starts off with an email from Mr. Joel Rostberg -- 23 Rostberg on September 23, 2016. And what's a 24 DAPL OPORD-33?</p> <p>25 A. Could you go -- could you scroll back</p>	<p style="text-align: right;">Page 124</p> <p>1 the same sheet of music.</p> <p>2 Q. Okay. So here you have -- thank you for 3 explanation; because I take it, then, you'll agree with 4 me. Here is the Morton County Emergency -- Assistant 5 Emergency Manager sending this OPORD. And look -- look 6 at that distribution group. It's impressive. It's 7 impressive, because it is a large representation of 8 North Dakota local and state officials. You can see 9 that from the domain names on their email addresses.</p> <p>10 And then you'll see that there are repeated individuals 11 from the United States Department of Justice, the 12 United States Federal Bureau of Investigation, the 13 Bureau of Indian Affairs, and Corps of Engineers, and 14 the United States Marshal, National Park Service, 15 multiple North Dakota counties; just a lot of people 16 being given this information.</p> <p>17 And there's no attachment to the 18 Government's -- the United States' production, so I 19 can't tell you what the actual document says. But if 20 we go up now in the list of the distribution of this 21 email, because one of the individuals -- one of the 22 several individuals copied on here are Corps of 23 Engineers people, which included a gentleman by the 24 name of Todd Lindquist from the Omaha District of the 25 Corps of Engineers; forwarded it on to another</p>
<p style="text-align: right;">Page 123</p> <p>1 down? You're going too fast. I'm sorry.</p> <p>2 Q. Yeah. That's all Mr. Rostberg is doing, 3 is attaching an OPORD for the operational period 4 September 23 through September 24, 2016. Who -- who 5 writes these OPORDS? What are they? Are they a Corps 6 of Engineers product?</p> <p>7 A. Is Mr. Rostberg part of the Army Corps? I 8 can't tell.</p> <p>9 Q. No.</p> <p>10 MR. SEBY: We'll go all the way to the 11 bottom, if we could, Rachel. There we go.</p> <p>12 Q. (BY MR. SEBY) Mr. Ross -- Rostberg --</p> <p>13 A. He's the Morton County -- he's the Morton 14 County emergency management guy for North Dakota.</p> <p>15 Q. Yeah, I get it.</p> <p>16 A. So an OPORD would be just an 17 operational -- I mean, they -- it's not uncommon, sir, 18 in -- in emergency operations command and control 19 centers -- like it looks like the Morton County EOC 20 generated this -- to generate something called an 21 OPORD, which stands for Operations Order; which 22 basically provides, generally, situational update and 23 then any tasks that have been assigned to different 24 people inside that organization and any coordinating 25 instructions that need to be made so everybody is on</p>	<p style="text-align: right;">Page 125</p> <p>1 gentleman in the Corps of Engineers named Todd 2 Lindquist.</p> <p>3 And Mr. Lindquist is also with the Omaha 4 District. And he says, "Keith, I haven't gotten a 5 chance to read the attached OPORD regarding DAPL. I'm 6 currently busy reviewing the 776 page ECP I'm supposed 7 to sign today for the land transfer to Three Affiliated 8 Tribes."</p> <p>9 So Mr. Fink sends it really quickly, that 10 same day of September 23, up to Colonel Henderson, the 11 District Commander, his boss. And he says, "Sir, The 12 attached is a law enforcement update on the DAPL 13 Protest Camps. Keith."</p> <p>14 And one of the people that is copied, 15 along with the District Commander, John Henderson, is 16 his Deputy District Commander, James Startzell. And 17 Startzell replies to this OPORD being provided to them, 18 he and the District Commander, and he says, "Thanks 19 Keith." He says this on Sunday, September 25, 2016, a 20 month before the last exhibit we looked at where you -- 21 and again, I'll use my phrase, not yours -- roll the 22 dice with the Standing Rock Sioux Tribe as the -- as 23 the partner to lead the Corps' plan with everything 24 that was going on on the Corps property.</p> <p>25 He says, "Thanks Keith. I'll include some</p>

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<p style="text-align: right;">Page 126</p> <p>1 of the highlights in the DAPL update on Monday. All of 2 this information basically confirms the Commander's 3 assessment that the camps are growing out of the 4 Standing Rock Sioux Tribe's control, and the Chairman 5 is probably going to try to use the SUP as a way to 6 regain control of what he sees as a legitimate" -- "as 7 legitimate protesters."</p> <p>8 So my question, again, now that we've 9 looked at both emails, the one a month later from here 10 where you're banking on the Tribe being your partner in 11 dealing with this massive riot on your property, a 12 month prior, the District Commander and the Deputy 13 District Commander had made a determination, at least 14 as of a month prior, maybe a lot earlier, that the 15 Standing Rock Tribe had no control; lost control, lost. 16 I don't think they relinquished it. It was taken from 17 them. Lost control of the camps.</p> <p>18 So a month later, you -- you authorized 19 and briefed a strategy to your boss so he could brief 20 the Vice Chairman of the Chief of Staff on a plan 21 that -- based upon a wrong assumption. How does that 22 make any sense? How is that reasonable, to use your 23 word?</p> <p>24 MS. ZILIOLI: Objection; assumes facts, 25 misstates evidence.</p>	<p style="text-align: right;">Page 128</p> <p>1 conclusion.</p> <p>2 And so to me, what you've shown me in 3 these two emails, they're complimentary and not at 4 odds, as you suggest. But this just is, again, a 5 confirmation of -- of an ever-evolving situation, and 6 confirmation of the communication between all parties, 7 and the efforts that we went through to do so, and the 8 confirmation of why we were trying to do what we were 9 trying to do, working with the leadership of North 10 Dakota and with the leadership of the tribes.</p> <p>11 Q. (BY MR. SEBY) Okay. I'll let the 12 language speak for itself and the time and distance and 13 the context of all of this speak for itself, sir. But 14 I do want to ask you one question. This email from 15 Deputy District Commander Startzell is September 25th. 16 Do you agree with me that was approximately one week 17 after the Corps had offered a special use permit, yet 18 to be signed by Chairman Archambault, and yet to be 19 complied with in order for it to be a real special use 20 permit in the sense of being in effect? Because I 21 don't think you would even tell me that a special use 22 permit is valid unsigned and uncomplied with, would 23 you?</p> <p>24 A. That's correct.</p> <p>25 Q. All right. Did you ever see the Tribe --</p>
<p style="text-align: right;">Page 127</p> <p>1 A. So if I can point you to the exact wording 2 on this, if you could blow up that note from Major 3 Startzell. So, first of all, with regard to this 4 document, I don't -- I don't know what verbiage was in 5 there that they might refer to, so I can't speculate 6 on -- on that. And I don't know, certainly, who all 7 those people were. I think this -- this overall 8 communication that you reference is -- is a good 9 indication of the level of effort that was ongoing 10 across the State interagency to work together to 11 understand the situation on the ground and to try and 12 figure out the best way forward on it.</p> <p>13 And as you look at this -- and it says, 14 right, that the terms are growing; not -- you used the 15 term "have lost control." That's not what this says, 16 and that's not what I said. But they are growing, not 17 yet to have gotten out of their control. But there's 18 an instrument, this special use permit, that was also 19 referred to in my email, which we were looking at as a 20 tool to help the Chairman of the Standing Rock Sioux be 21 successful in achieving what it was that he was trying 22 to accomplish; which was to separate what we all 23 considered to be the legitimate protesters from those 24 who were not, and then allow him to use his leadership 25 to take this situation to a deescalated and safe</p>	<p style="text-align: right;">Page 129</p> <p>1 Standing Rock Sioux Tribe meet the conditions of the 2 permit that was tendered to them a week prior to this 3 date?</p> <p>4 MS. ZILIOLI: Objection, legal 5 conclusion.</p> <p>6 A. I don't believe they were ever able to 7 meet all the provisions at the -- at the end of the 8 day. I know that they were trying to do that, and we 9 were working with them to try to help them do that, 10 because of the resources that they had at hand, but I 11 don't -- to answer your question, no.</p> <p>12 Q. (BY MR. SEBY) Is it your practice in the 13 Corps, while you were there in any of your capacity -- 14 you were a district commander, weren't you?</p> <p>15 A. Yes, sir, I was.</p> <p>16 Q. More than once?</p> <p>17 A. No, sir. I was a district commander one 18 time.</p> <p>19 Q. And -- and remind me how long you were in 20 that capacity, sir?</p> <p>21 A. The district commander, for three years.</p> <p>22 Q. While you were a district commander, were 23 you educated or formally trained or did you take it 24 upon yourself to learn, either way, the requirements of 25 the Corps of Engineers Title 36 regulations?</p>

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<p style="text-align: right;">Page 130</p> <p>1 A. Sir, I became familiar with them, as do 2 all district commanders. But we have very highly 3 trained staff in our legal office that -- that know 4 every word in all these regulations. And we work with 5 them to help make the right decisions on how some of 6 these documents -- how some of these things go forward.</p> <p>7 Q. So that's the normal practice, right?</p> <p>8 A. Well, I don't know that in the Corps of 9 Engineers there's ever a day where there's something 10 absolutely normal.</p> <p>11 Q. I'm just trying to understand what you're 12 talking about when you say you have special knowledge, 13 at least being a district commander. And you said you 14 were familiar with special use permits, but you have 15 highly trained staff and you rely on them to make these 16 decisions in processing special use permits. Yes or 17 no? Am I remembering what you said; if not, correct 18 it.</p> <p>19 A. I said the district commanders, including 20 myself, get familiar -- and I've certainly read the 21 regulations. But those that -- that know them best and 22 are experts in those are our legal staff. And we rely 23 on them to interpret the language in the regulations as 24 different issues arise with the missions that we face.</p> <p>25 Q. And would that include the -- whether and</p>	<p style="text-align: right;">Page 132</p> <p>1 about his staff that was developing the special use 2 permit, or somebody outside of the Army Corps of 3 Engineers?</p> <p>4 Q. (BY MR. SEBY) I'm asking outside of the 5 district commander and the Omaha District, which I 6 believe you told me or suggested was the typical manner 7 of addressing special use permits.</p> <p>8 A. Yes, sir. I can't confirm that that did 9 not occur. Sometimes on very complicated issues, like 10 this one was, it's very likely that other legal teams 11 outside of the District Counsel in Omaha may have 12 looked at this; but I can't confirm if that happened 13 and, if so, by whom.</p> <p>14 Q. How about --</p> <p>15 A. But it would not be uncommon -- it would 16 not be uncommon to -- to do that for situations like 17 this.</p> <p>18 Q. It's not uncommon?</p> <p>19 A. No.</p> <p>20 Q. So what other instances, as either 21 district commander or as the chief deputy to the chief 22 of engineers, can you tell me where that actually 23 happened, other than it being processed by the 24 district?</p> <p>25 A. I can't tell you specifics, but I can tell</p>
<p style="text-align: right;">Page 131</p> <p>1 how to develop a draft special use permit for an 2 applicant, based upon their request?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Okay. Are you aware that the Standing 5 Rock Sioux Tribe submitted a permit application on or 6 about August 24, 2016?</p> <p>7 A. Sir, I'm aware that they submitted the 8 request, but I don't remember what date. So I can't 9 verify that date, but I do know that they submitted 10 one, probably around that time.</p> <p>11 Q. Are you aware, sir, that the Corps of 12 Engineers, including senior Corps leadership, reported 13 that the Standing Rock Sioux Tribe submitted an amended 14 permit application that did not match facts on the 15 ground?</p> <p>16 MS. ZILIOLI: Objection, assumes facts.</p> <p>17 A. No, sir, I'm not aware of that.</p> <p>18 Q. (BY MR. SEBY) Are you aware of whether or 19 not the decision to develop and offer a special use 20 permit, unsigned, to the Standing Rock Sioux Tribe 21 Chairman -- that the development of that draft permit 22 was overseen by individuals other than the district 23 commander?</p> <p>24 MS. ZILIOLI: Same objection.</p> <p>25 A. When you say "overseen," are you talking</p>	<p style="text-align: right;">Page 133</p> <p>1 you -- because I don't recall any specifics. But I 2 just know, having served as a district commander and as 3 a division commander, that oftentimes if there are 4 issues at the district level that are district 5 authority that may have national-level implications, 6 the Chief Counsel of the Army Corps likes to have 7 others look at it, just to make sure that folks are 8 making the right calls on the interpretation and such. 9 And that's just standard practice in the Corps. It's 10 good common sense. And that could have been the case 11 here, but I can't confirm it.</p> <p>12 Q. Okay. Common -- you used the term 13 "common," but you can't recall any -- any specifics or 14 examples, right?</p> <p>15 MS. ZILIOLI: Objection, argumentative.</p> <p>16 A. I've been gone from the Army Corps of 17 Engineers for about four or five years, so my apologies 18 if I don't remember some of the specifics you're 19 looking for. No, I can't, off the top of my head.</p> <p>20 Q. (BY MR. SEBY) How many years, sir, did 21 you serve in the Army Corps of Engineers in any 22 capacity?</p> <p>23 A. I served three years as a district 24 commander; two years as a division commander, one year 25 in Afghanistan and then about three years at the</p>

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<p style="text-align: right;">Page 134</p> <p>1 headquarters. So about nine years overall, spread out 2 over a 16-year period.</p> <p>3 Q. In your career with the Corps of 4 Engineers, how many special use permitting actions did 5 you participate in?</p> <p>6 A. I didn't participate in any. I was 7 monitoring and aware of this particular one, just 8 because of the national significance of this, the 9 national media attention that was occurring, in my role 10 at the time.</p> <p>11 Q. I'm trying to understand how you can 12 reasonably venture and comment that it's not uncommon 13 for something to happen outside of the process of the 14 district commander in the district processing special 15 use permit. You're telling me, no, it's not uncommon, 16 but you don't have any instances to identify and you 17 don't have any experience to fall back on to support 18 your statement, do you?</p> <p>19 MS. ZILIOLI: Objection; misstates 20 testimony, argumentative.</p> <p>21 A. All I'm saying is that I don't personally 22 recall a specific instance that I can share with you. 23 I just know that the -- having the experience of being 24 a commander at multiple levels, that very complicated 25 issues like this often get more legal reviews than just</p>	<p style="text-align: right;">Page 136</p> <p>1 staffs. In this particular case, it's very likely that 2 this press release was coordinated with the Army Public 3 Affairs Office, because of the national significance of 4 it.</p> <p>5 Q. (BY MR. SEBY) Yeah.</p> <p>6 A. And so it was probably -- before it was 7 released, it was probably, you know, synchronized or at 8 least socialized so folks were not surprised when the 9 Corps put that out. The comment that I --</p> <p>10 Q. As part of -- I'm sorry, sir. I thought 11 you were done.</p> <p>12 A. I am.</p> <p>13 Q. As part of your job as the -- General 14 Jackson, as the second-in-command under -- under the 15 Chief, was it your job to interact and communicate 16 occasionally or very frequently with Lowry Crook, the 17 Chief -- or Principal Deputy to the Assistant Secretary 18 of the Army for Civil Works, Ms. Jo-Ellen Darcy?</p> <p>19 A. No. I -- I tried to communicate with 20 Lowry daily, every other day, as much -- as often as I 21 could, just because of the nature of our two positions.</p> <p>22 Q. Particularly during the DAPL protests 23 occurring on Corps land, wouldn't you say?</p> <p>24 A. I spoke with Lowry Crook almost daily, 25 regardless of DAPL. But yes, it certainly was also</p>
<p style="text-align: right;">Page 135</p> <p>1 can be provided at the District Counsel's office.</p> <p>2 I just don't remember specific -- or I 3 guess you could say that every feasibility study that 4 the Corps conducts as part of their Civil Works process 5 gets reviewed, as a matter of procedure, at multiple 6 levels; at the district, division, and national level. 7 Maybe that could be a good example for you to use. But 8 that's an example of attorneys at different levels 9 looking at documents to make sure that they understand 10 the potential national and the regional implications of 11 a legal opinion that's made at a district level.</p> <p>12 Q. (BY MR. SEBY) So given all of that and 13 our discussion about these issues and your testimony 14 here on the record, are you aware -- were you ever 15 aware that people, other than lawyers outside the 16 Corps, were looking at the special use permit and the 17 Corps' press release on September -- Friday, 18 September 18 or 19 had a hand in developing either of 19 those documents; non-lawyers?</p> <p>20 MS. ZILIOLI: Objection; assumes facts, 21 misstates evidence.</p> <p>22 A. I'm not aware -- I mean, obviously press 23 releases are handled by multiple people that are 24 outside of the legal channel. So a press -- usually 25 press releases are coordinated amongst different</p>	<p style="text-align: right;">Page 137</p> <p>1 during the DAPL time frame.</p> <p>2 Q. Okay. So -- and the -- and the nature of 3 your professional relationship with Mr. Crook and the 4 frequency with which you communicated with him, during 5 and apart from the DAPL protest period, eight months, 6 but Mr. Crook would have only been there from the -- 7 the period of the start through the end of the Obama 8 Administration, because he was an employee for a 9 political appointee, correct?</p> <p>10 A. Yes, sir. The position that he occupied 11 was a political appointee; yes, sir.</p> <p>12 Q. And so with respect to the special use 13 permit, out for a week or so as of September 25, 2016, 14 I asked you whether it was common or uncommon for 15 special use permits at the district to be elevated 16 above that inside the Corps, and I think you said yes. 17 But are you familiar with instances where that 18 elevation of a special use permit included being shared 19 with multiple federal agencies?</p> <p>20 A. I -- I'm quite certain that we talked 21 about the special use permit with other federal 22 agencies; not for their approval, but so that they 23 understood what it was that we were doing. Because a 24 special use permit, obviously, is an Army Corps of 25 Engineers instrument. And so as part of our ongoing</p>

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<p style="text-align: right;">Page 138</p> <p>1 collaboration and coordination with both the State and 2 other federal agencies, I'm sure that we talked about 3 what that was, what it was being used for. And 4 certainly the -- the timing that was associated with it 5 in that press release that you referenced, was 6 certainly socialized with others, just to make sure 7 that no one was surprised by any actions that -- that 8 the Corps took during this time frame.</p> <p>9 Q. Okay. How about, were you aware that 10 Mr. Crook was taking the Corps documents in draft and 11 sharing them with -- and discussing them and inviting 12 editing from one or ten individuals in the Office -- 13 Executive Office of the President, in the White House?</p> <p>14 MS. ZILIOLI: Objection; assumes facts, 15 misstates evidence.</p> <p>16 Q. (BY MR. SEBY) The question is, are you -- 17 were you aware of that, sir?</p> <p>18 MS. ZILIOLI: Same objections.</p> <p>19 THE DEONENT: Can I -- should I answer 20 this or --</p> <p>21 MS. ZILIOLI: Go ahead.</p> <p>22 THE DEONENT: Okay, yeah.</p> <p>23 A. So I'm aware that he was sharing press 24 releases with the Executive Office of the President, 25 because as part of that National Security Council</p>	<p style="text-align: right;">Page 140</p> <p>1 Q. Well, is that part of the NSC process, or 2 Mr. Crook just telling you, "That's what I want you to 3 do"?</p> <p>4 A. You know, now that I -- now that you 5 mentioned it, I believe I'd like to make that 6 correction to the record; that I don't think this press 7 release synchronization did occur out of that NSC 8 process. As I remember now, it was Lowry Crook and I 9 just making sure that -- he wanted to make sure 10 that inside the EOP, that there were no surprises 11 with -- with press releases that came out of the Corps 12 during this Dakota Access Pipeline timeline. So I 13 stand corrected. I apologize.</p> <p>14 Q. No, that's fine. I invited you to correct 15 your testimony if it -- if it was not accurate the 16 first time you said it. You've done that a couple 17 times, and we're -- we're all the better for it. So 18 that's good. When did Mr. Crook tell you that?</p> <p>19 A. I don't -- I don't recall when he told me 20 that.</p> <p>21 Q. Was the White House or, you know, 22 generally speaking, Executive Office of the President, 23 White House, did they participate in these NSC calls?</p> <p>24 A. I never saw a listing of who was on the 25 telephone calls. I do know that on one particular call</p>
<p style="text-align: right;">Page 139</p> <p>1 deliberation that I talked about earlier, we are asked 2 to make sure that all press releases that went out 3 were -- at least were synchronized with the -- with the 4 EOP to make sure that -- again, so no one -- they were 5 not surprised at -- at what we were putting out in our 6 press release; so, yes.</p> <p>7 I'm not aware of any editing on the 8 special use permit. I am aware that they looked at our 9 press releases before -- before we sent them out.</p> <p>10 Q. (BY MR. SEBY) Okay. So we had quite a 11 discussion trying to understand what you were telling 12 me and the record with regard to your participation in 13 the NSC process and when that occurred and maybe when 14 it didn't. You gave me a several-month period that it 15 may have started and -- but you don't recall, I think. 16 But when -- when did that directive and the NSC process 17 about all press releases being synchronized with the 18 White House arise? Do you remember that?</p> <p>19 A. No, sir, actually, I don't. I'm sorry.</p> <p>20 Q. You do remember it, though, now, that you 21 did receive such direction, right?</p> <p>22 A. I -- I recall being directed by -- or 23 being told by Lowry Crook that that was -- that we 24 needed to make sure that that was synchronized. And so 25 that's why he was involved with that.</p>	<p style="text-align: right;">Page 141</p> <p>1 I remember a gentleman by the name of Brian Deese who 2 spoke, but all he did was ask a clarifying question. 3 And he's the only one that wasn't representing a 4 specific agency that I or -- and/or the State of North 5 Dakota that I recall hearing speak on -- on those 6 sessions that I attended.</p> <p>7 Q. So when I asked, were there White House 8 representatives on the NSC call, and you've gone 9 through Mr. Deese's name, does that mean the answer to 10 my question is yes?</p> <p>11 A. Can you restate your question, please?</p> <p>12 Q. It's -- it's really short. It's, did the 13 White House also have representatives participating in 14 the NSC calls that you told me about?</p> <p>15 MS. ZILIOLI: Objection, asked and 16 answered.</p> <p>17 MR. SEBY: Well, he's asking me what was 18 asked. So let's move on and not waste time, please.</p> <p>19 A. You want me to answer the question or --</p> <p>20 Q. (BY MR. SEBY) Yes.</p> <p>21 A. -- you want to move on? Okay. No. 22 The -- the only one that I'm aware of is Brian Deese. 23 And I only knew he was from the White House, because I 24 recognized his name after I looked him up. I didn't 25 know who he was at the time.</p>

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<p style="text-align: right;">Page 142</p> <p>1 Q. What was his clarifying question?</p> <p>2 A. I don't recall.</p> <p>3 MR. SEBY: Okay. Let's take another</p> <p>4 ten-minute break, please.</p> <p>5 MS. ZILIOLI: Okay.</p> <p>6 THE VIDEOGRAPHER: Going off the record.</p> <p>7 The time is 6:11 p.m. UTC, 12:11 a.m. (sic) Mountain.</p> <p>8 (Recess, 12:11 p.m. to 12:23 p.m. MDT.)</p> <p>9 THE VIDEOGRAPHER: We are back on the</p> <p>10 record. The time is 6:23 p.m. UTC, 12:23 p.m.</p> <p>11 Mountain.</p> <p>12 MR. SEBY: Okay. Rachel, if we could</p> <p>13 please go to Exhibit 709, 7-0-9.</p> <p>14 (Deposition Exhibit 709, remotely</p> <p>15 introduced and provided electronically to the court</p> <p>16 reporter.)</p> <p>17 Q. (BY MR. SEBY) General Jackson, this is an</p> <p>18 email between you and General Spellmon, starting on</p> <p>19 October 25, 2016, at the bottom. If you would read</p> <p>20 up -- up the chain here, so we can talk about it; the</p> <p>21 first one being an email October 25, 4:43 in the</p> <p>22 afternoon, from -- from you to Dave Meyer, asking</p> <p>23 General Spellmon a question. If you'd please look at</p> <p>24 that.</p> <p>25 A. (Deponent examined document.) Okay.</p>	<p style="text-align: right;">Page 144</p> <p>1 Understand all and greatly appreciate you making the</p> <p>2 call. I think we are close. [We] will try to</p> <p>3 schedule . . . tomorrow afternoon if you are</p> <p>4 [available.]"</p> <p>5 So you say you understand all. And that's</p> <p>6 what I want to ask you about, because you're</p> <p>7 acknowledging General Spellmon's email. To what degree</p> <p>8 did you appreciate the impacts of protesters being on</p> <p>9 the Corps property in the several hundreds to several</p> <p>10 thousands for, at this point, three, four months' time,</p> <p>11 and no permits, no authorizations, just people out on</p> <p>12 the North Dakota prairie, 24/7, using it as they did?</p> <p>13 And the neighbors in the area, the residents in this</p> <p>14 area, to what degree did you ever inquire about the</p> <p>15 effects and impacts of the protest camps on Corps</p> <p>16 property on your neighbors?</p> <p>17 MS. ZILIOLI: Objection; assume facts,</p> <p>18 misstates evidence.</p> <p>19 A. You're asking --</p> <p>20 Q. (BY MR. SEBY) No. I'm asking you, sir,</p> <p>21 what -- what did you do to learn -- to understand --</p> <p>22 you were -- you were searching to understand a lot, you</p> <p>23 told me. So I'm asking you, very specifically, what</p> <p>24 effort did you make, if any, to appreciate the problems</p> <p>25 the Corps was being (sic), as a landowner in a</p>
<p style="text-align: right;">Page 143</p> <p>1 Can you scroll up a little bit? Okay.</p> <p>2 Thanks. That's good.</p> <p>3 (Deponent examined document.) Okay.</p> <p>4 Q. Okay. So, thanks for reading that.</p> <p>5 The -- after you asked -- you asked General Spellmon</p> <p>6 for some information regarding the Corps' lessee on the</p> <p>7 north area, north of the Cannonball River, the</p> <p>8 gentleman's name is David -- Dave Meyer -- Spellmon</p> <p>9 responds -- General Spellmon responds to your inquiry</p> <p>10 saying, "Sir - I just got off the phone with David. He</p> <p>11 and I met during my visit, and we spent some [time]</p> <p>12 together in the protest camps."</p> <p>13 And so he says, "Really nothing new to</p> <p>14 report here. He" -- meaning Mr. Myers -- "like</p> <p>15 everyone who lives in this area, are getting more and</p> <p>16 more frustrated with the protests and their impact on</p> <p>17 everyday life. I don't mean to sound dramatic, but the</p> <p>18 protests have become routine events with no end in</p> <p>19 sight and tension is growing (this tension even came</p> <p>20 through in our Seattle listening session today).</p> <p>21 "David was unclear on the way ahead. I</p> <p>22 walked him through the general scheme of maneuver as I</p> <p>23 understand it, and committed we would keep him better</p> <p>24 informed with what we know."</p> <p>25 You responded by saying, "Thanks Scott.</p>	<p style="text-align: right;">Page 145</p> <p>1 neighborhood consisting of farmers and ranchers, apart</p> <p>2 from your Native American -- the Native American</p> <p>3 reservation that was located to the south of your</p> <p>4 property? Just -- if you'd just explain to me what you</p> <p>5 did to understand all that was going on with the people</p> <p>6 in the neighborhood, other than the tribes.</p> <p>7 A. No. Sure. We -- as part of the</p> <p>8 discussions that we had between John Henderson and</p> <p>9 General Spellmon -- and I -- I don't remember exactly</p> <p>10 when, but we talked about some of those concerns that</p> <p>11 had been expressed to Colonel Henderson. And so I was</p> <p>12 aware that -- of some of the impacts that were being</p> <p>13 faced by some of the folks in the local area.</p> <p>14 I think -- I mean, we routinely</p> <p>15 communicated -- "we" being the Corps -- with the</p> <p>16 Congressional delegation from North Dakota. So I</p> <p>17 think, you know, this was Senator Heitkamp, who had</p> <p>18 reached out to me and asked -- you know, we tried to</p> <p>19 keep them up to date with what we were doing, as we did</p> <p>20 with everybody else that we were working with at the</p> <p>21 time. And she must have asked some very specific</p> <p>22 questions about Mr. Meyer and his situation.</p> <p>23 And that was the subject of this, just to</p> <p>24 make sure that we were reaching out and he knew how to</p> <p>25 get ahold of us if he had any questions and just to,</p>

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<p style="text-align: right;">Page 146</p> <p>1 you know, make sure that we were communicating 2 effectively with others as well. So that's -- 3 that's -- that's what this was all about.</p> <p>4 Q. You mentioned some of the impacts you 5 were -- you were aware of. What impacts are you 6 talking that you were aware of? What are you 7 referencing?</p> <p>8 A. I know that some of the -- there were 9 some -- some debris placed on some of the state roads 10 that were, you know, blocking traffic; which the State 11 Highway Department, I think, was -- was trying to keep 12 open. I know that there were -- I had seen a report 13 of -- although I haven't confirmed anything, I had seen 14 reports that there had been some livestock that had 15 been slaughtered. But I don't know the details, I just 16 remember vaguely hearing -- seeing that in a report, 17 that somebody had made that allegation.</p> <p>18 And I also, you know, knew that obviously 19 they -- where the protest camps were, they were on this 20 grazing area, this grazing lease that we talked about 21 earlier. So I was aware of -- of those types of 22 things. And just with the descending of many people 23 onto the local towns, I was also aware that there were 24 impacts of just providing life support to all these 25 people that were descending on the prairie. And that</p>	<p style="text-align: right;">Page 148</p> <p>1 first DAPL storyboard shows. That's right on top of 2 his lease area, right? That's -- that's that camp?</p> <p>3 A. It could be. If that's depicted on that 4 storyboard, then that's -- that's confirmation of that; 5 yes, sir. And I would have -- I would have known, I 6 just don't have that in front of me.</p> <p>7 Q. Any other impacts that you're aware of 8 that you care to round out your testimony?</p> <p>9 A. I'm not aware of any others; no, sir.</p> <p>10 Q. Trespassing on private lands, farm lands, 11 cutting fences?</p> <p>12 A. I'm not aware of that. Although, I'm sure 13 if it happened, it would have been in a report and I -- 14 I would have read it. But I just don't recall any 15 specific instances; no, sir.</p> <p>16 Q. Okay. Did you ever include that in your 17 briefing materials to your superior officers inside the 18 Army or outside with the other federal officials you 19 were talking to, "Hey, we've got people on our property 20 that are really harassing farmers and ranchers, 21 blocking roads, school buses can't move through, 22 children prevented from going to school, children in 23 fear of standing at a bus stop because people come up 24 and harass them, animals being killed by the dozens," 25 that kind of thing? Ever hear about that?</p>
<p style="text-align: right;">Page 147</p> <p>1 was something that we talked about, we in the Corps; 2 mostly John, some -- some General Spellmon, and then 3 with the -- with the folks in North Dakota, just so we 4 were, you know, understanding those impacts.</p> <p>5 So that's -- we were just trying to -- and 6 you asked me, specifically for me. So I just tried to 7 stay tuned into what those issues were and what those 8 concerns were, so I could make sure that my boss and 9 Ms. Darcy were aware of them as well.</p> <p>10 Q. So the answer to my question of what 11 impacts you were talking about, you told me debris on 12 the State roads, reports of livestock being 13 slaughtered, and grazing leases -- conflicts with -- 14 with grazing leases, right?</p> <p>15 A. Right; because my understanding was that 16 some of the protesters were on these leased areas, and 17 obviously that was an issue with our -- the folks who 18 had those leases. I think that's what -- I can't 19 remember -- I don't remember specifically where Dave 20 Meyer's property was in relation to the Corps property, 21 but I think he was one of those that had some concerns 22 about -- about grazing leases. But I may be -- I may 23 be wrong.</p> <p>24 Q. Well, he's your lessee on the area that -- 25 the -- the protest camp known as the North Camp, your</p>	<p style="text-align: right;">Page 149</p> <p>1 MS. ZILIOLI: Objection; assumes facts, 2 misstates --</p> <p>3 Q. (BY MR. SEBY) I'm asking if you knew 4 about that or know of reports to that effect?</p> <p>5 A. I -- I had heard reports, as I mentioned 6 in my testimony just now, some of those things. I 7 don't know where -- who did them or where they were 8 when they occurred, so -- but I did hear that those -- 9 there were some instances like that that you described. 10 It was in my earlier testimony.</p> <p>11 Q. Anyone ever tell you, sir, that the 12 protesters that decided, on their own volition, to 13 trespass on Corps property for months on end decided to 14 use the safety of Corps property to go conduct trespass 15 and harassment throughout the county locally and then 16 even into the capital city of Bismarck and the 17 neighboring city of Mandan?</p> <p>18 MS. ZILIOLI: Objection; assumes facts, 19 misstates evidence, legal conclusion.</p> <p>20 A. No, sir, I'm not aware -- I'm not aware of 21 anybody staging out of the Corps property and doing the 22 things you just described; no, sir.</p> <p>23 Q. (BY MR. SEBY) Did you tell me that you 24 had a Corps representative present in the State and 25 Morton County law enforcement Emergency Operations</p>

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<p style="text-align: right;">Page 150</p> <p>1 Center?</p> <p>2 A. Yes, sir, I did.</p> <p>3 Q. Did that individual ever report to you</p> <p>4 what he saw projected on the screen on a daily basis?</p> <p>5 A. I don't recall specifically what he</p> <p>6 reported to me; no, sir. I'm sorry.</p> <p>7 Q. Were you advised ever, then, maybe to</p> <p>8 further prompt your recollection, that footage was</p> <p>9 shown on a repeated basis of individuals on the Corps</p> <p>10 property convening caravans, preparing to -- and</p> <p>11 training participants to conduct raids on neighboring</p> <p>12 private property and into the capital city of Bismarck,</p> <p>13 North Dakota? Ever -- ever hear anything about that?</p> <p>14 MS. ZILIOLI: Objection; assumes facts,</p> <p>15 misstates evidence.</p> <p>16 A. Never heard anything about that; no, sir.</p> <p>17 Q. (BY MR. SEBY) What do you think they were</p> <p>18 doing on the Corps property for a couple of months at a</p> <p>19 time protesting the Dakota Access Pipeline; just</p> <p>20 staying there and cooking meals and riding horses and</p> <p>21 digging pits and putting waste into the pits just by</p> <p>22 themselves and stayed on the Corps property 24/7? Is</p> <p>23 that what you think?</p> <p>24 MS. ZILIOLI: Objection, argumentative.</p> <p>25 A. All I know is what I -- what I received</p>	<p style="text-align: right;">Page 152</p> <p>1 introduced and provided electronically to the court</p> <p>2 reporter.)</p> <p>3 Q. (BY MR. SEBY) Before we talk about this</p> <p>4 exhibit, I want to ask you something. Did you ever</p> <p>5 receive a briefing from the Federal Bureau of</p> <p>6 Investigation with respect to the several-month-long</p> <p>7 protests and camps on Corps property, ever?</p> <p>8 A. From the FBI?</p> <p>9 Q. Yup.</p> <p>10 A. I don't recall ever getting a briefing</p> <p>11 from the FBI; no, sir.</p> <p>12 Q. Did you ever receive a written briefing</p> <p>13 from the FBI; not verbal, but written?</p> <p>14 A. Sir, I don't recall seeing a report from</p> <p>15 the FBI. I may have, but I don't recall it.</p> <p>16 Q. Did you ever speak with the Chairman of</p> <p>17 the Standing Rock Sioux Tribe, David Archambault?</p> <p>18 A. I spoke with Chairman Archambault, in</p> <p>19 passing, at the National Congress of American Indians</p> <p>20 conference that took place in Phoenix, Arizona that</p> <p>21 year.</p> <p>22 Q. "In passing," what -- what does that mean?</p> <p>23 A. He was on the podium speaking, and I was</p> <p>24 the follow-up speaker, and we shook hands as he was</p> <p>25 leaving the stage. And that was what I'm -- that's</p>
<p style="text-align: right;">Page 151</p> <p>1 reports on, so . . .</p> <p>2 Q. (BY MR. SEBY) And how do you think the</p> <p>3 people who were on Corps property for months at a time,</p> <p>4 with no authorization -- what do you think they were</p> <p>5 doing there?</p> <p>6 MS. ZILIOLI: Same objection and assumes</p> <p>7 facts, legal conclusion.</p> <p>8 A. Sir, I don't know specifically what</p> <p>9 individual people were doing there, other than what was</p> <p>10 reported.</p> <p>11 Q. (BY MR. SEBY) How about groups of people,</p> <p>12 not individuals? I'm talking about large numbers of</p> <p>13 people getting in large numbers of cars and driving out</p> <p>14 of the Corps property to conduct hit-and-run missions</p> <p>15 and coming back to the safety of the Corps property</p> <p>16 because they knew you weren't going to do a darn thing</p> <p>17 about it, and neither would any of your federal</p> <p>18 partners?</p> <p>19 MS. ZILIOLI: Objection; assumes facts,</p> <p>20 misstates evidence, argumentative.</p> <p>21 A. Sir, I don't recall ever hearing any</p> <p>22 reports of that type of activity.</p> <p>23 MR. SEBY: Okay. Could we go to</p> <p>24 Exhibit 711, please.</p> <p>25 (Deposition Exhibit 711, remotely</p>	<p style="text-align: right;">Page 153</p> <p>1 what I refer to.</p> <p>2 Q. So just a -- in passing, I appreciate your</p> <p>3 comment. It's literally a greeting and that was it,</p> <p>4 right?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Okay.</p> <p>7 A. Because I was -- I was next on the agenda</p> <p>8 to speak. So we didn't have a chance to talk for very</p> <p>9 long and then he left.</p> <p>10 Q. He was getting down, and you were getting</p> <p>11 up to speak?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Okay. So now we're going to talk about</p> <p>14 711. This is an email communication between you and</p> <p>15 your boss, the Chief of Engineers. You sent General</p> <p>16 Semonite and General Spellmon an email, it's copied to</p> <p>17 John Henderson, and it says, "DAPL Discussions (CLOSE</p> <p>18 HOLD: DO NOT DISTRIB)." Do not distribute? Is that</p> <p>19 the word you're abbreviating?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And you put, again, "CLOSE HOLD PLEASE."</p> <p>22 You say, Lieutenant General Semonite and Scott, I spoke</p> <p>23 this evening with Lowry Crook. He indicated . . . over</p> <p>24 the weekend, he received clear intent from the</p> <p>25 Administration on where they wanted to go on the next</p>

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<p style="text-align: right;">Page 154</p> <p>1 steps for DAPL."</p> <p>2 Remember that call with Lowry Crook, late 3 October?</p> <p>4 A. I don't recall it. And the screen just 5 went blank, so I can't see the email.</p> <p>6 MR. SEBY: Hold on, please. It's being 7 brought back up. Rachel, do you need a minute, or are 8 you okay?</p> <p>9 MS. HYMEL: Yes, I need one second, 10 please. Can we go off the record?</p> <p>11 MR. SEBY: Yes. Ms. Zilioli, your 12 courtesy of going off the record, please?</p> <p>13 MS. ZILIOLI: Of course.</p> <p>14 MR. SEBY: Thank you.</p> <p>15 THE VIDEOGRAPHER: Going off the record. 16 The time is 6:41 p.m. UTC, 12:41 p.m. Mountain. 17 (Pause in the proceedings.)</p> <p>18 THE VIDEOGRAPHER: We are back on the 19 record. The time is 6:43 p.m. UTC, 12:43 p.m. 20 Mountain.</p> <p>21 Q. (BY MR. SEBY) General, if you would take 22 a minute and read your email message to your boss on 23 October 30th, 2016, please.</p> <p>24 A. Okay. Thank you. (Deponent examined document.) Okay.</p>	<p style="text-align: right;">Page 156</p> <p>1 A. The EIS decision was made much later. I 2 think that was made in January. But she issued a 3 statement, which I'm sure you have a copy of, in, I 4 think, early December, that directed us to do some 5 additional environmental work on -- on this project 6 before she would agree to sign the easement.</p> <p>7 Q. Well, this was --</p> <p>8 A. So this was a call -- this was a call with 9 Lowry that gave me some indication that that's the way 10 she was leaning, so . . .</p> <p>11 Q. So you're right. I'm aware of the 12 December directive from Ms. Darcy. And if Lowry knew 13 that was the clear intent from the Administration on 14 October 30th, or at least as of October 30th, because 15 you spoke that evening with Lowry Crook, why did it 16 take a month for that to be announced by Ms. Darcy?</p> <p>17 MS. ZILIOLI: Objection; misstates 18 evidence and testimony.</p> <p>19 Q. (BY MR. SEBY) Well, this is October 30th. 20 So my understanding of the Roman calendar, which we 21 follow, is there's an intervening month -- whole month 22 of November, and then she made her letter in December. 23 So that's at least a month, Mr. -- General Jackson, 24 right?</p> <p>25 A. That's correct; yes, sir. Your</p>
<p style="text-align: right;">Page 155</p> <p>1 Q. Okay. Thank you for reading that. I was 2 asking you, now that you've read it, do you recall the 3 call that you're briefing your boss on, with Lowry 4 Crook, about the intent from the Administration?</p> <p>5 A. I -- I -- I don't recall the specifics, 6 but I recall having a call from him; yes, sir.</p> <p>7 Q. Now that you've read your own email, none 8 of that refreshes your memory? Because you sure tried 9 to contrast what you heard from him, whenever it was, 10 and had a pretty clear statement of frustration with 11 offering a, "Hey, we need to know what it is we're 12 shooting for and what we're doing. And if you don't 13 like it, tell us so we can come up with a different 14 approach." Isn't that what you're saying?</p> <p>15 A. Yeah. What I'm saying, this particular 16 conversation references the permit decision of the 17 easement decision.</p> <p>18 Q. I know that. So I'm asking you, what did 19 it -- what else did it talk about? You're talking 20 about they want to go on next steps for DAPL. What 21 is -- what is that?</p> <p>22 A. They wanted us to do additional 23 environmental review; which is what, ultimately, 24 Ms. Darcy did.</p> <p>25 Q. An EIS?</p>	<p style="text-align: right;">Page 157</p> <p>1 calendar -- your calendar recollection is correct.</p> <p>2 Q. Why did it take her a month to say 3 something that Lowry had a clear intent, understanding 4 of at the end of October?</p> <p>5 MS. ZILIOLI: Objection, misstates 6 evidence.</p> <p>7 A. Sir, that -- I have no idea. That's a 8 question for Ms. Darcy. I don't know why it took that 9 long.</p> <p>10 Q. (BY MR. SEBY) Okay. And am I right to 11 read some frustration in your -- your words here; 12 that -- that you're being asked to do something, but 13 you don't know, with any specificity, what it is and 14 whether or not what you do will hit the mark or just 15 receive a "bring me another rock" directive and 16 continue just to delay and waste time and ride out the 17 Administration, or not?</p> <p>18 A. Well, I won't comment to whether or not 19 there was frustration. What we wanted to do was to 20 understand what task -- or what information the 21 Secretary needed in order to make her decision, one way 22 or the other. And so that -- that was -- as I read it, 23 that was really what -- I was asking for something in 24 writing that would really help us know specifically 25 what -- what we were being asked to do.</p>

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<p style="text-align: right;">Page 158</p> <p>1 So I do want you to comment on 2 frustration. You can't excuse yourself from commenting 3 on it. I want you to tell me whether or not you agree 4 with the strong frustration expressed by the Chief and 5 others, including General Spellmon and Colonel 6 Henderson, that there was deliberate steps taken, over 7 the course of several months, to inject requirements 8 that you weren't even clear of (sic). And all it did 9 is have the net effect of wasting time, delaying the 10 process.</p> <p>11 Meanwhile, thousands of people were 12 gathered on your property causing havoc and conducting 13 riot activity inside the state and on the State of 14 North Dakota. And those were concurrent events. I got 15 the impression from those other gentlemen they were 16 extremely frustrated. And I'm asking you, were you as 17 well?</p> <p>18 MS. ZILIOLI: Objection; assume facts, 19 misstates evidence.</p> <p>20 A. I don't recall being frustrated. I just 21 wanted to get clear guidance so that we could get the 22 information that Ms. Darcy needed to help her make that 23 decision. That was my job. I don't get personally 24 frustrated over things like that. I just -- sometimes 25 I get impatient, and maybe that's the tone that you</p>	<p style="text-align: right;">Page 160</p> <p>1 opposed to a release, asked you to clarify the 2 timeline. ". . . we are working with Chairman 3 Archambault, and ensure we include that in the 4 release." What working with Chairman Archambault is 5 being referenced here? Is this still that idea that 6 you're investing in the Tribe to fix everything?</p> <p>7 A. Absolutely; yes, sir.</p> <p>8 Q. Okay. And you said "They" -- I think 9 you're referencing the White House Comms folks -- 10 "seemed a bit concerned over how discussion of the 11 Special Use Permit expiration might be received by some 12 parties???" What special use expiration?</p> <p>13 A. Well, there was -- as I recall, there was 14 a period of time that the Standing Rock Sioux were 15 given to comply with the special use permit, provide 16 all the information that they needed to provide, and 17 that time had -- was about to expire or had expired. I 18 can't recall, exactly. And so -- and I don't -- I 19 don't recall specifically what this particular press 20 release was about. Although, I think it probably had 21 something to do with saying that that special use 22 permit that had been requested had either been extended 23 or had expired. I just don't remember which one it 24 was --</p> <p>25 Q. Are you -- are you talking --</p>
<p style="text-align: right;">Page 159</p> <p>1 picked up in this email. Certainly, it was to 2 everybody's advantage to get the appropriate amount of 3 information that the Secretary needed to make the 4 decision as soon as possible. And I was just 5 interested in getting that as soon as possible so we 6 could get started with it.</p> <p>7 Q. (BY MR. SEBY) Okay. You've read this 8 entire email, right?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Okay. So we don't need to reread stuff. 11 I want to talk about the second paragraph. You 12 presented -- you say, "The Press Release we presented 13 on Friday for consideration was reviewed over the 14 weekend by the White House Comms folks." Who's that? 15 I mean, I know they're in the White House, but who? 16 A. Sir, I don't know, specifically. You 17 would have to -- Lowry Crook would know specifically 18 who he worked with in the -- on the White House 19 Communications team.</p> <p>20 Q. So this is another example of Mr. Crook at 21 least following what he asked you to do; and that is, 22 run any of our press releases through the White House 23 for approval?</p> <p>24 A. That's correct; yes, sir.</p> <p>25 Q. Okay. And Lowry told you they were not</p>	<p style="text-align: right;">Page 161</p> <p>1 A. -- what -- I'm sorry. Go ahead, sir.</p> <p>2 Q. What special use permit are you talking 3 about?</p> <p>4 A. The one that the Standing Rock Sioux Tribe 5 had applied for.</p> <p>6 Q. Way back in August? We're at -- we're at 7 the end of October, sir. What are you talking about?</p> <p>8 A. I'm talking about the special use permit 9 that the Standing Rock Sioux Tribe submitted. I don't 10 know if it was the original one that they submitted. I 11 can't recall if they submitted a second one or not. I 12 don't remember off the top of my head. But I do know 13 that there was still a special use permit in play at 14 this time, and that's what this was in reference to.</p> <p>15 Q. So the special use permit, as you may 16 recall, was offered to the Tribe the third week of 17 September. That would be six weeks prior to this 18 email. So you're still dancing around thinking that 19 you can get the Tribe to meet the conditions of the 20 draft permit that you offered them six weeks prior?</p> <p>21 MS. ZILIOLI: Objection; ambiguous, 22 argumentative.</p> <p>23 A. Sir, it was in everyone's best interest at 24 the time, that this -- this course of action was the 25 best way forward. And that was agreed upon by all</p>

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<p style="text-align: right;">Page 162</p> <p>1 parties that -- that were part of this; to include the 2 Tribe, to include the Corps of Engineers. And as I 3 recall, it included the State as well.</p> <p>4 Q. (BY MR. SEBY) Well, wait a minute. Very 5 beginning of this deposition, three hours ago, we read 6 an email that said the Governor quite clearly told 7 Colonel Henderson, reported to you and Chief Semonite, 8 he strongly opposed you granting a special use permit 9 to the Tribe.</p> <p>10 A. That's correct, but I think the change in 11 Administration in North Dakota had occurred by this 12 time. I don't remember that exactly, but I knew there 13 was a different --</p> <p>14 Q. Huh-uh.</p> <p>15 A. -- different view on that when the new 16 Governor came into office. I just don't remember 17 exactly when that was.</p> <p>18 Q. Who was Governor of the State of North 19 Dakota on October 30th, sir?</p> <p>20 A. I don't know.</p> <p>21 Q. It's Governor Jack Dalrymple, the same 22 Governor that you were reported advised the Corps of 23 Engineers he strongly opposed you giving a permit to 24 any protester, including the Standing Rock Sioux Tribe. 25 So we're not talking about a new Governor with a</p>	<p style="text-align: right;">Page 164</p> <p>1 that we were going to withdraw that as an option and 2 look at other options or try to find some other 3 options, other than the special use permit. That's 4 what I recall about this. So there's no change in 5 testimony.</p> <p>6 Q. (BY MR. SEBY) Where would we see and who 7 would tell us, if it's not in writing, that there was 8 some decision made -- some purposeful decision made in 9 the Corps, either by the Corps or at the direction of 10 the White House or anybody else, that -- that you were 11 giving the Standing Rock Sioux Tribe an express defined 12 period of time; and that here we are, six weeks later, 13 you're still within that period of time, and you're 14 debating whether or not to -- to move on and say, "Oh, 15 let's do something different"? What -- what evidence 16 do you have, is my question?</p> <p>17 A. Oh, I don't have any evidence. I would 18 tell you that I'm only aware of this from the 19 discussions that I recall having with General Spellman 20 and with Colonel Henderson.</p> <p>21 Q. Okay. So you were relying on what they 22 told you. And if they were wrong, you just accepted it 23 and -- and that was the situation you were operating 24 under, right?</p> <p>25 MS. ZILIOLI: Objection, argumentative.</p>
<p style="text-align: right;">Page 163</p> <p>1 hypothetical different position, sir.</p> <p>2 MS. ZILIOLI: Objection, counsel is 3 testifying.</p> <p>4 Q. (BY MR. SEBY) So I want to ask you, were 5 you laboring under the misimpression that there was a 6 special use permit and that it had expired?</p> <p>7 A. Was I laboring? Can you define what you 8 mean by "was I laboring"?</p> <p>9 Q. Well, you're talking about -- this is your 10 email. There seemed to be a bit of confusion over 11 how -- discussion of the special use permit expiration. 12 There was -- are you -- let me back up. I thought you 13 and I agreed there never was a special use permit 14 issued that went into effect to the Standing Rock Sioux 15 Tribe. So my question is, unless you're changing your 16 testimony, that there was nothing to expire. So why do 17 you use that word here?</p> <p>18 MS. ZILIOLI: Objection, legal 19 conclusion.</p> <p>20 A. No, I don't -- I don't change my 21 testimony. As I -- as I recall, there was a period of 22 time that the Standing Rock Sioux was given to comply 23 with the terms that were in the special use permit. 24 And as I recall, they had not yet been able to comply 25 with those. And so the subject of this discussion was</p>	<p style="text-align: right;">Page 165</p> <p>1 A. I had no reason to think that they were 2 wrong. They were keeping me informed with what they 3 were doing, so . . .</p> <p>4 Q. (BY MR. SEBY) As you sit here today, were 5 they wrong or were they right?</p> <p>6 MS. ZILIOLI: Objection, ambiguous.</p> <p>7 A. As I sit here today, knowing what I know 8 about the complexity of the situation on the ground, 9 those two gentlemen did the best they could do under 10 the circumstances. They made the decisions that they 11 made based on the information that they had at the 12 time. They made the best decisions that they could 13 based upon their ongoing collaboration with the 14 Standing Rock Sioux and other tribal leaders in the 15 state of North Dakota.</p> <p>16 So I don't second-guess anything that 17 either one of those two gentlemen did throughout this 18 whole episode. I'm grateful, and our nation should be 19 grateful, to have leaders like that in those positions.</p> <p>20 Q. (BY MR. SEBY) Did those gentlemen receive 21 a commendation, an award, or a medal from the United 22 States Government for their service involving the 23 period of the DAPL protests?</p> <p>24 A. Both of those gentlemen probably got an 25 award for the overall period of service that they</p>

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<p style="text-align: right;">Page 166</p> <p>1 served as commanders of their respective organizations. 2 The time that the DAPL protest went on was a part of 3 that time, but it wasn't given specifically for 4 anything that they did in the DAPL protest. But it 5 would have been for their period of service, which is a 6 standard for -- for military officers who spend two or 7 three or four years in a command location.</p> <p>8 MR. SEBY: Okay. Let's go to Exhibit 712, 9 please.</p> <p>10 (Deposition Exhibit 712, remotely 11 introduced and provided electronically to the court 12 reporter.)</p> <p>13 Q. (BY MR. SEBY) So this is a short email. 14 It's from Lieutenant Colonel Tedeschi, to you, and 15 copied to a bunch of other folks in the Corps, 16 including the Deputy District Commander for the 17 District of Omaha and the Chief -- or, pardon me, the 18 District Commander, John Henderson. And so let's look 19 at this email addressed to you, Major General Jackson; 20 Ms. K. D-A, Karen Durham-Aguilera. It says, "Today's 21 DAPL Storyboard is attached." And the date of this 22 email is November 1, 2016.</p> <p>23 "Colonel Henderson continues to report no 24 direct impact to Northwest Omaha Operations. 25 Headquarters USACE has received reports of the planning</p>	<p style="text-align: right;">Page 168</p> <p>1 did. I don't remember how we responded to -- to that 2 request.</p> <p>3 Q. I'm asking not how you responded. Did you 4 make any effort, you or the Corps -- "you" being the 5 Corps. Did the Corps make any effort to determine 6 whether or not waste handling was being conducted on 7 the protest site?</p> <p>8 A. I don't have any direct knowledge of what 9 we did in response to that.</p> <p>10 Q. So you don't know whether any -- any 11 effort was made at all?</p> <p>12 A. I don't know what was done -- to answer 13 your question, I don't -- I don't know how we responded 14 to that. If a -- if a request was made, it's standard 15 process -- standard procedure that we would respond to 16 the requester. But I don't have any evidence to show 17 that -- that I know exactly what we did or didn't do.</p> <p>18 Q. Are you aware of what the -- with the 19 consequences of disposing waste on the banks of the 20 Missouri River are?</p> <p>21 A. Yes, sir --</p> <p>22 Q. What are they?</p> <p>23 A. -- in general terms.</p> <p>24 Q. What are they, sir?</p> <p>25 A. I would assume it would be contamination</p>
<p style="text-align: right;">Page 167</p> <p>1 of protests at multiple [U.S. Corps] sites, throughout 2 the nation, on or about November 15. We expect Chief 3 of Engineers guidance to the workforce later this 4 week."</p> <p>5 I want to ask you about the next sentence. 6 "The North Dakota Department of Public Health is 7 requesting that [Corps] determine if waste handling is 8 being conducted in accordance with applicable law and 9 to take action if it's not." So did the Corps 10 determine if waste handling on your property at the 11 Lake Oahe Project was occurring in accordance with 12 applicable law, and did the Corps take action if it 13 found it did not?</p> <p>14 MS. ZILIOLI: Objection; legal conclusion 15 and attorney-client privilege to the extent the answer 16 would provide attorney-client advice.</p> <p>17 MR. SEBY: Let's -- I'm not asking about 18 any of those things.</p> <p>19 Q. (BY MR. SEBY) And so, General, let's 20 break down this sentence. It's one sentence, and I 21 want to ask you, did the Corps ever make any effort, 22 and if so what, to determine whether waste handling was 23 being -- occurring on its property at the Oahe Project 24 in the state of North Dakota?</p> <p>25 A. Sir, I don't -- I don't remember what we</p>	<p style="text-align: right;">Page 169</p> <p>1 of the water source. So that would -- that would be 2 what I would expect it to be.</p> <p>3 Q. Do you find any irony, large or small, in 4 the fact that people were on Corps property digging 5 large holes in the ground, throwing dead animals, 6 waste, food, human waste, and just garbage into holes 7 on Corps property next to the Missouri River?</p> <p>8 MS. ZILIOLI: Objection, assumes facts.</p> <p>9 A. I'm not sure I understand what your 10 question is.</p> <p>11 Q. (BY MR. SEBY) Am I accurate in 12 understanding that the -- one of the leading cries and 13 charges of people gathering on the Corps property and 14 being allowed to stay there for months on end was to 15 protect water?</p> <p>16 A. Sir, that was the original intent of the 17 Standing Rock Sioux, who initiated the protest. But as 18 you know, many, many other people that were not related 19 at all to these tribes descended on this area. And I 20 can't -- all I know about what you just described is 21 that when we went through the cleanup, we found this 22 activity had taken place. But I don't know what was 23 done -- again, to answer your original question, I 24 don't know specifically what we were -- how we 25 responded to the North Dakota Department of Public</p>

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<p style="text-align: right;">Page 170</p> <p>1 Health, given this request that you highlighted in this 2 email.</p> <p>3 Q. Where do you think the thousands of people 4 on Corps property were throwing refuse? Where do 5 you -- how do you think they were disposing of the 6 garbage and waste that comes from thousands of people 7 gathering the way they did on Corps property? What did 8 the Corps think was going to happen?</p> <p>9 A. Sir, I can't -- I can't answer what I 10 thought the Corps thought of that, because I wasn't 11 aware, specifically, of what you described until we 12 began the cleanup operation. Then, I became more aware 13 of what -- what debris and refuse was left on the site.</p> <p>14 Q. Would you kindly explain what you saw or 15 were told as to the kind of materials that were left 16 behind by the protesters after they were directed to 17 leave in January-February?</p> <p>18 A. Sir, there were -- there was garbage, just 19 general garbage; abandoned vehicles; abandoned 20 construction materials; and just human refuse, in 21 general terms.</p> <p>22 Q. So you -- you had some relation to the 23 cleanup effort, correct?</p> <p>24 A. Yes, sir.</p> <p>25 Q. And the manner -- I appreciate you don't</p>	<p style="text-align: right;">Page 172</p> <p>1 MS. ZILIOLI: Objection, assumes facts. 2 A. I don't recall being advised of anything 3 specific along those lines. But that would be 4 normal -- you know, normally what we would do when we 5 contract out any type of debris removal is -- you know, 6 the contractor that goes in would make the assessment 7 on what was actually there, and then we would, you 8 know, adjust the contracts accordingly, based on what 9 they found. It's very similar to how we do some of our 10 debris operations in a post-storm operation as part of 11 our Emergency Management mission.</p> <p>12 Q. Do you recall being advised there were 13 waste pits that had to be excavated, and it contained 14 all that kind of waste and large amounts of it; human 15 waste, food waste, dead animals, carcasses of whatever, 16 clothing, propane tanks, all thrown into the ground on 17 Corps property in porous soils on the banks of the 18 Missouri River? Do you recall that?</p> <p>19 A. Yes, sir.</p> <p>20 MS. ZILIOLI: Objection, assumes facts. 21 MR. SEBY: He just answered yes.</p> <p>22 MS. ZILIOLI: Counsel, I believe we are at 23 four hours. If you could please wrap up.</p> <p>24 MR. SEBY: Is that correct, 25 Mr. Videographer?</p>
<p style="text-align: right;">Page 171</p> <p>1 know what you knew, but then -- or until you got to the 2 cleanup area on your property, because there really 3 wasn't much Corps attention to what was going on on its 4 land. But later, you did learn, and you talked about 5 all that stuff strewn across your property, thousands 6 of tons of material that had to be taken off. Who was 7 the entities that took off the material from the Corps 8 property, left behind by the thousands of people?</p> <p>9 MS. ZILIOLI: Objection, assumes facts.</p> <p>10 A. I know that -- based on my recollection, 11 we contracted out some of it, and I think the State did 12 some as well. I don't remember, exactly, who all was 13 involved. I just know that we participated in paying 14 for it and doing a cleanup after the protesters 15 departed. I just don't -- I can't tell you exactly 16 what that -- what that amounted to and who else was 17 involved.</p> <p>18 Q. (BY MR. SEBY) Do you recall being advised 19 that part of the pricing given to the Corps for the 20 small portion it expended for cleanup activities was 21 priced at a level due to the contractor telling the 22 Corps that this is because there are hazardous 23 materials and substances on your property that we need 24 to handle and dispose of in accordance with federal and 25 state law?</p>	<p style="text-align: right;">Page 173</p> <p>1 THE VIDEOGRAPHER: We have been going for 2 four hours, five minutes.</p> <p>3 MR. SEBY: All right. Thank you.</p> <p>4 Q. (BY MR. SEBY) General, I'm going to wrap 5 things up. And I appreciate your time and your 6 engaging responses.</p> <p>7 Can you recall a time, sir, when the 8 United States, as a whole, ever made a statement that 9 resulted in any deescalation of the protests occurring 10 against the Dakota Access Pipeline on property owned 11 and managed by the Corps of Engineers?</p> <p>12 A. The federal government making a statement? 13 I -- I know statements were made, but I don't remember 14 exactly what they were. And I don't -- it was several 15 statements made, I know, to try to deescalate; but 16 again, I don't know what the cause and effect was.</p> <p>17 Q. So you don't -- you can't identify a 18 single statement, but you think that they resulted in 19 the act of deescalating the protests?</p> <p>20 MS. ZILIOLI: Objection, mischaracterizes 21 testimony.</p> <p>22 Q. (BY MR. SEBY) Well, I don't understand 23 it, then. Would you clarify, please?</p> <p>24 A. I don't -- I know there were statements 25 made. I don't recall what the statements were. And</p>

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<p style="text-align: right;">Page 174</p> <p>1 I'm not -- I don't recall exactly what happened as a 2 result of those statements.</p> <p>3 MS. ZILIOLI: Counsel, the witness has 4 another obligation to go to, so we really do need to 5 finish.</p> <p>6 MR. SEBY: The only thing keeping us from 7 doing that is you're talking.</p> <p>8 Q. (BY MR. SEBY) So unless you've indicated 9 otherwise, General, throughout the deposition today 10 have you understood my questions today?</p> <p>11 A. Yes, sir.</p> <p>12 MR. SEBY: All right. I don't have 13 anything further. Thank you very much.</p> <p>14 THE DEONENT: Thank you, sir.</p> <p>15 MS. ZILIOLI: I have no questions. We'll 16 read and sign. Thanks.</p> <p>17 THE REPORTER: And same orders as before; 18 the etran and the exhibits?</p> <p>19 MR. SEBY: Yes, ma'am.</p> <p>20 THE REPORTER: Thank you.</p> <p>21 MS. ZILIOLI: Yes, please.</p> <p>22 THE VIDEOGRAPHER: And real quick, Erica. 23 Did you need a copy of the video?</p> <p>24 MS. ZILIOLI: I don't -- whatever our 25 standing order is. I don't believe we have, but I can</p>	<p style="text-align: right;">Page 176</p> <p>1 I, MAJOR GENERAL DONALD E. JACKSON, JR. 2 (RET.), do hereby certify that I have read the above 3 and foregoing deposition and that the same is a true 4 and accurate transcription of my testimony, except for 5 attached amendments, if any.</p> <p>6 Amendments attached <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>7</p> <p>8</p> <p>9</p> <hr/> <p>10 MAJOR GENERAL DONALD E. JACKSON, JR. (RET.)</p> <p>11</p> <p>12</p> <p>13 The signature above of MAJOR GENERAL 14 DONALD E. JACKSON, JR. (RET.) was subscribed and sworn 15 to or affirmed before me in the county of _____, 16 state of Colorado, this _____ day of _____, 17 2022.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <hr/> <p>22 Notary Public My commission expires</p> <p>23</p> <p>24</p> <p>25 State of North Dakota, 7/29/22 (go)</p>
<p style="text-align: right;">Page 175</p> <p>1 double-check with the U.S. Attorney's Office. Thank 2 you.</p> <p>3 THE VIDEOGRAPHER: Okay. All right. 4 Thank you. Going off the record. This concludes the 5 remote video-recorded deposition of General Donald E. 6 Jackson. The time is now 7:12 p.m. UTC, 1:12 p.m. 7 Mountain. We are off the record.</p> <p>8 WHEREUPON, the within proceedings were 9 concluded at the approximate hour of 1:12 p.m. Mountain 10 on the 29th day of July, 2022.</p> <p>11 * * * * *</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 177</p> <p>1 REPORTER'S CERTIFICATE</p> <p>2 STATE OF COLORADO) 3 CITY AND COUNTY OF DENVER) 4 I, GAIL OBERMEYER, Registered Professional 5 Reporter and Notary Public ID 19994012647, State of 6 Colorado, do hereby certify that previous to the 7 commencement of the examination, the said MAJOR GENERAL 8 DONALD E. JACKSON, JR. (RET.) verbally declared his 9 testimony in this matter is under penalty of perjury; 10 that the said deposition was taken in machine shorthand 11 by me at the time and place aforesaid and was 12 thereafter reduced to typewritten form; that the 13 foregoing is a true transcript of the questions asked, 14 testimony given, and proceedings had.</p> <p>15 I further certify that I am not employed 16 by, related to, nor of counsel for any of the parties 17 herein, nor otherwise interested in the outcome of this 18 litigation.</p> <p>19</p> <p>20 IN WITNESS WHEREOF, I have affixed my 21 signature this 8th day of August, 2022. 22 My commission expires May 20, 2023. 23 <i>Gail Obermeyer</i></p> <hr/> <p>24 Gail Obermeyer, RPR 25 Registered Professional Reporter Notary Public, State of Colorado</p> <p>20 <input checked="" type="checkbox"/> Reading and Signing was requested. 21 <input type="checkbox"/> Reading and Signing was waived. 22 <input type="checkbox"/> Reading and Signing is not required.</p>

1 Errata Sheet 2 3 NAME OF CASE: Plaintiff vs UNITED STATES 4 DATE OF DEPOSITION: 07/29/2022 5 NAME OF WITNESS: Major General Donald E. Jackson, Jr. (RET.) 6 Reason Codes: 7 1. To clarify the record. 8 2. To conform to the facts. 9 3. To correct transcription errors. 10 Page ____ Line ____ Reason ____ 11 From _____ to _____ 12 Page ____ Line ____ Reason ____ 13 From _____ to _____ 14 Page ____ Line ____ Reason ____ 15 From _____ to _____ 16 Page ____ Line ____ Reason ____ 17 From _____ to _____ 18 Page ____ Line ____ Reason ____ 19 From _____ to _____ 20 Page ____ Line ____ Reason ____ 21 From _____ to _____ 22 Page ____ Line ____ Reason ____ 23 From _____ to _____ 24 25 _____	Page 178
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